

1 UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
 3 ASHEVILLE DIVISION

3 UNITED STATES OF AMERICA)

4)

5)

5 vs.)

6)

DOCKET NO.

7)

1:19-cr-28-MR-WCM-2

8)

7 RODNEY DEJUAN ALLISON,)

8)

9)

Defendant.

10 TRANSCRIPT OF SENTENCING HEARING
 11 BEFORE THE HONORABLE MARTIN REIDINGER
 12 UNITED STATES DISTRICT COURT JUDGE
 13 FEBRUARY 24, 2022

13 APPEARANCES:

14 On Behalf of the Government:

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18 On Behalf of the Defendant:

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25 *Proceedings recorded by mechanical stenography, transcript
 produced by computer-aided transcription.*

1 THE COURT: The next matter that we have that's on the
2 calendar today is United States versus Rodney Dejuan Allison,
3 which is before the Court for the sentencing of the defendant
4 pursuant to his plea of guilty on the charge of conspiracy to
5 possess with intent to distribute controlled substances in
6 violation of 21 U.S.C. Sections 841 and 846.

7 Now, since I don't have local counsel to introduce you,
8 I'll let pro hac counsel tell me who they are and announce your
9 appearance on the record.

10 MR. THOMAS: Good afternoon, your Honor. I'm William
11 Thomas. Again, as the Court's noted, we're here from Atlanta.
12 I represent Mr. Allison, along with --

13 MR. BANKS: Gabe Banks, and I'm also from Atlanta, as
14 well, Judge. Good morning. It's certainly a pleasure to
15 appear in front of you.

16 THE COURT: Well, I welcome you to this court, look
17 forward to hearing from you in this matter.

18 Is the defendant prepared to proceed?

19 MR. THOMAS: I believe so, your Honor. We're ready to
20 proceed.

21 THE COURT: Okay. Mr. Kent, is the Government
22 prepared to proceed?

23 MR. KENT: Yes, your Honor.

24 THE COURT: In preparation for the hearing today, I
25 have reviewed, again, the objections to the presentence report.

1 I have seen a motion for downward departure that came from the
2 Government.

3 I have seen, actually, three different sentencing
4 memoranda. There was one that was filed on behalf of the
5 defendant back in October of 2020, I have seen one from the
6 Government responding to the defendant's objections, and then
7 there was another memorandum filed on behalf of the defendant
8 that was filed yesterday. It was not filed in accordance with
9 our local rules, but it was filed yesterday.

10 The one from October of 2020 had accompanying it various
11 letters of support, and there was also a report, an expert
12 report, that went with it. Are there any items that have been
13 submitted in anticipation of this hearing that I did not
14 mention?

15 Mr. Thomas, any for the defendant?

16 MR. THOMAS: No, your Honor, I don't think so.

17 THE COURT: Mr. Kent, anything else for the
18 Government?

19 MR. KENT: No, your Honor. Thank you.

20 THE COURT: I will note, regarding that second
21 sentencing memorandum on behalf of the defendant, -- I'll ask
22 you all the same question that I would ask any other lawyer
23 who did that. And that is, when did you think I was going to
24 read it?

25 MR. THOMAS: Your Honor, to the extent we have not

1 filed at the time as we should, that's on the attorneys. As
2 this Court knows, this case has had a lot of moving parts. I'd
3 really prefer not to go further on that, but it is -- I will
4 tell you this, again, just to give the Court a brief
5 introduction about myself.

6 I spent a year sitting on the other side of the table and
7 appreciate the timeliness issues. I'll just say this. We
8 failed in that regard, and I'd just ask the Court to excuse
9 that for purposes of this hearing.

10 THE COURT: Well, and to that extent, first of all,
11 our local rules say, if you're going to submit any sentencing
12 memorandum, it has to be filed with the Court through the ECF
13 system at least 27 days prior to the sentencing hearing.
14 That's the technical transgression.

15 The hard part is, if you file it the night before, the
16 day before the hearing, I don't have a lot of opportunity to
17 read it. Now, I'll tell you, I did read it. In fact, I read
18 it twice. And I'm not going to do to you like what Woodrow
19 Jones -- predecessor, Woodrow Jones -- (indicating) -- has done
20 to many a lawyer in his day of saying, do you want me to read
21 or do you want to talk? I'm not going to do that.

22 I read it. I'm going to give you the opportunity to
23 argue. But to the extent that you may come back here in the
24 future, please don't do this.

25 MR. THOMAS: I understand, your Honor. And I

1 appreciate that. And the only other thing I would indicate --
2 and, again, you know, I'm not going to stand here and make
3 excuses. We failed in that regard.

4 We did attempt to file it under seal, and I had the
5 potential to file it a little earlier and wasn't familiar with
6 the proceedings on how to do that. And so that probably
7 delayed it a bit. Again, no excuse, and I -- again, I
8 appreciate the Court's indulgence.

9 THE COURT: Well, you actually raised the next issue
10 that I wanted to talk to you about, and that is you made a
11 motion to seal, but, as you may be aware -- or at least you
12 should be aware -- that in the Fourth Circuit there is a case
13 about sealing sentencing memoranda called US v. Harris. You
14 didn't comply with anything having to do with US v. Harris.

15 So what I'm going to do is, later today, I'm going to
16 enter an order denying your motion to seal. I will allow that
17 memorandum to remain provisionally under seal for a period of
18 maybe 10 days or so while you all go ahead and comply with
19 US v. Harris. That involves filing a motion, filing an
20 unredacted and a redacted version of the memorandum. And
21 US v. Harris tells you what things need to be redacted and what
22 things have to be on the public record.

23 We don't do things in private here. There are certain
24 things that have to be, but we -- a wholesale sentencing
25 memorandum that expresses the relief that you want on behalf of

1 the defendant cannot be, in toto, filed under seal.

2 MR. THOMAS: I understand, your Honor.

3 THE COURT: So please take care of that. Don't let
4 that get away from you because, if it does, at the end of that
5 period of time, the memorandum that's provisionally under seal
6 goes on the public record.

7 MR. THOMAS: I understand.

8 THE COURT: So please keep that in mind.

9 MR. THOMAS: Thank you, your Honor.

10 THE COURT: Mr. Allison, I need for you to stand,
11 please.

12 Do you recall appearing before the magistrate judge on or
13 about the 1st day of November back in 2019 for the purpose of
14 entering a plea of guilty in this case?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you remember being sworn in or placed
17 under oath at that time?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you remember answering the questions of
20 the magistrate judge?

21 THE DEFENDANT: Answering the questions?

22 THE COURT: Right. Do you remember that the
23 magistrate judge, during that hearing, he asked you a whole
24 series of questions, and you had to answer them?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, as part of that proceeding, is it
2 correct that you signed what was called a plea inquiry form,
3 where those answers -- your answers to all those questions were
4 on a piece of paper, and there were check marks and everything,
5 and then, at the end, you checked all those answers, and then
6 you signed it? Is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: When you signed that plea inquiry form, it
9 indicated that your -- the answers that you gave to the
10 magistrate judge were true and correct. Is that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, were your answers that you gave to
13 the magistrate judge, in fact, true and correct? In other
14 words, did you tell him the truth?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, if I went back through all those
17 questions again today -- and I think that your attorney is
18 showing you a copy of that list of questions. If I went back
19 through all of those questions again here today, would your
20 answers be the same as what they were back then?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, Mr. Thomas and Mr. Banks, you did not
23 represent Mr. Allison as of the time of his plea; is that
24 correct?

25 MR. THOMAS: That is correct, your Honor.

1 THE COURT: However, based on what you are aware of in
2 your representation of Mr. Allison, from whatever source, are
3 you satisfied that he fully understood the questions that were
4 asked of him by the magistrate judge at his Rule 11 hearing?

5 MR. THOMAS: I am indeed, your Honor, particularly
6 based on the document that the Court just referred to.

7 THE COURT: Are you satisfied that he has fully
8 understood the questions I have asked him here today?

9 MR. THOMAS: I am, your Honor.

10 THE COURT: And, Mr. Allison, did you answer all of
11 those questions the way that you did and are you pleading
12 guilty because you did, in fact, commit the crime with which
13 you are charged?

14 THE DEFENDANT: Trying to just figure out what -- what
15 crime they had me charged with.

16 THE COURT: Well, the crime that you pleaded to was
17 conspiracy to possess with intent to distribute controlled
18 substances in violation of 21 United States Code Sections 841
19 and 846.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is your plea of guilty the result of any
22 threat or force or promise, other than the promises in your
23 plea agreement?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you pleading guilty voluntarily?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, in this case, you pleaded guilty
3 pursuant to a plea agreement. And in that plea agreement, you
4 have agreed and the Government has agreed to certain facts and
5 certain factors for sentencing. But under the law, I'm not
6 required to accept those facts or those factors just because
7 both sides have agreed. And if I declined to accept any of
8 those facts or factors in my sentencing decision, that will not
9 give you the right to withdraw your plea. Do you understand
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Based upon the representations made to the
13 Court and the answers given by the defendant at the Rule 11
14 hearing before the magistrate judge, the Court finds,
15 concludes, and confirms that the defendant's plea is knowingly
16 and voluntarily made and that the defendant understands the
17 charges, potential penalties, and consequences of his plea.

18 Mr. Thomas, does the -- does the defendant stipulate that
19 there is a factual basis to support his plea of guilty entered
20 in this case and, further, that the Court may accept the
21 evidence as set forth in the presentence report, which includes
22 the factual-basis document that was adopted at the Rule 11
23 hearing, as well as the statement of relevant conduct that was
24 submitted by the Government thereafter, all as establishing
25 such factual basis?

1 MR. THOMAS: Your Honor, we agree that there is a
2 factual basis for Mr. Allison's plea, particularly as set forth
3 in the factual basis that he signed off on. That's correct.
4 As the Court notes, we do have some objections to the
5 presentence report, but, yes, we agree there's a factual basis.

6 THE COURT: Well, I need to make sure I have a clear
7 record as to what I'm supposed to find the factual basis is.
8 I'm not asking about your objections to some of the findings of
9 the probation officer --

10 MR. THOMAS: With that, your Honor, we agree, then,
11 that there's a factual basis.

12 THE COURT: Well, and in addition to agreeing that
13 there is a factual basis, does the defendant stipulate that the
14 factual-basis document that was adopted at the Rule 11 hearing
15 that is recounted verbatim in the presentence report and that
16 the statement of relevant conduct that the Government has
17 submitted to the Court that is also recounted verbatim in the
18 presentence report -- that those two documents set forth what
19 the factual basis is for the plea?

20 MR. THOMAS: Yes, your Honor.

21 THE COURT: Mr. Kent, does the Government stipulate?

22 MR. KENT: Yes, your Honor.

23 THE COURT: Based on the stipulation of the parties
24 and the evidence set forth in the presentence report -- that
25 being the factual-basis document and the statement of relevant

1 conduct, all of which have been previously reviewed by the
2 Court -- and based upon the defendant's admission of guilt, the
3 Court finds, concludes, and confirms that there is a factual
4 basis for the defendant's plea.

5 Accordingly, the Court confirms the magistrate judge's
6 acceptance of the defendant's guilty plea, and this Court has
7 accepted and does accept the defendant's plea of guilty, finds
8 the defendant is guilty, and enters thereon a verdict and
9 judgment of guilty.

10 Mr. Allison, there is a document that has been prepared by
11 the probation officer. The document that I'm talking about, on
12 its front page on the upper left-hand side, has a caption that
13 reads "United States of America Versus Rodney Dejuan Allison,"
14 and then, on the upper right-hand side of the front page, has a
15 title that reads "Presentence Investigation Report." It's the
16 document that your attorney was just talking about a minute
17 ago.

18 Have you seen the document that I'm talking about prior
19 to today? I see that your attorney is now showing you a
20 copy of --

21 THE DEFENDANT: Yes.

22 THE COURT: So you've seen that document before today;
23 is that right?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you had an opportunity to review it

1 with your attorney?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand the contents of that
4 document?

5 (Discussion off the record.)

6 THE DEFENDANT: Oh, yes.

7 THE COURT: And, Mr. Thomas, have you had an adequate
8 opportunity to review the presentence report with Mr. Allison?

9 MR. THOMAS: We have, your Honor.

10 THE COURT: Are you satisfied that he understands the
11 contents of the presentence report?

12 MR. THOMAS: I am, your Honor.

13 THE COURT: Okay. Thank you, Mr. Allison. You may be
14 seated.

15 Before we proceed with the next phase having to do with
16 the presentence report, in light of the complexities of today's
17 hearing, I want to make sure that I understand how we're going
18 to go forward.

19 The first thing I want to ask about has to do with the
20 pending issue of forfeiture because usually I get to this point
21 and there's a consent order of forfeiture. And I know that
22 here the Government has made a motion for forfeiture and has
23 tendered a proposed order, but I don't see where there's a
24 consent order.

25 MR. KENT: Your Honor, if I may, I -- I've addressed

1 that issue with both Mr. Thomas and Mr. Banks. And prior to
2 court today, they -- we all signed a proposed consent order, a
3 judgment of forfeiture forfeiting the defendant's interest in
4 the items that are listed in the indictment, all of the items,
5 which I'd like to hand up now to Miss Miller, your Honor.

6 THE COURT: You may approach and hand that up.

7 MR. KENT: (Indicating.)

8 THE COURT: The next thing that I want to address,
9 just to understand how we are going to go forward -- because
10 the next thing that we need to dispose of would be any
11 objections to the presentence report, but is there -- is there
12 anything that either side is seeking to present by way of
13 evidence before we move on to that?

14 MR. KENT: Your Honor, the Government's not seeking to
15 introduce witnesses or call witnesses. I'm going to rely on
16 the very lengthy response that I made, which is -- a lot of it
17 is based upon things that were filed, essentially, or sworn to
18 under oath by the codefendants or admissions in the case, your
19 Honor.

20 THE COURT: Okay. Mr. Thomas, is that likewise
21 correct with regard to the defendant?

22 MR. THOMAS: That's correct, your Honor. We have no
23 witnesses with regards to the objections that we'll be
24 addressing today.

25 THE COURT: Do you -- with that qualifier, are you

1 planning to call any witnesses about any topic as part of this
2 hearing?

3 MR. THOMAS: I do note that Mr. Allison has family
4 members here, and I would probably just introduce them to the
5 Court. I don't expect to call them, to have them sworn as
6 witnesses.

7 THE COURT: Okay. At what point are you wanting to do
8 that? And are you just wanting to introduce them so that I
9 understand that they're here in support of Mr. Allison --

10 MR. THOMAS: That's correct, Judge.

11 THE COURT: -- or were you wanting something more than
12 that?

13 MR. THOMAS: No, that's the -- the former, just to
14 introduce them in support of Mr. Allison.

15 THE COURT: Well, and I would say, if you're wanting
16 to do that, let's turn to that right now so that I understand
17 who's here on behalf of Mr. Allison.

18 MR. THOMAS: Your Honor, Mr. Allison's wife is here,
19 Latasha Allison, and I believe she's with Mr. Allison's young
20 son, Zamore (phonetic) Allison.

21 THE COURT: Okay.

22 MR. THOMAS: Can you just stand so the Court --
23 can you all stand up for the Court so the Court can see you?
24 Thank you.

25 And that's really what we wanted to do, and that's really,

1 again, more so that the Court knows that Mr. Allison is here,
2 he's here with his family, and that they support him in these
3 efforts. I think that will be probably relevant just to some
4 arguments I'll be making to the Court towards the end of this
5 proceeding.

6 THE COURT: Okay. Very good. Thank you.

7 Well, let's turn, then, to the objections to the
8 presentence report. And particularly, the sentencing
9 memorandum that was filed very clearly delineated which
10 objections were withdrawn and which ones were not.

11 So let's -- let's turn to the objections and -- actually,
12 all of the remaining objections, if I understand correctly, are
13 the ones that pertain to the calculation of the offense level
14 and, thus, the calculation of the guideline range. First let's
15 look at the enhancement that is in paragraph 95. Of course,
16 all -- this enhancement is under the drug guideline
17 2D1.1(b)(1).

18 Mr. Thomas, I read what you put in the sentencing
19 memorandum, but I guess my first question for you is -- as you
20 know, the -- I refer to it as the nexus provision. The
21 connection between a gun and any sort of controlled-substance
22 transaction for the enhancement under 2D1.1 is a really low
23 bar. All the other nexus provisions in the guidelines are
24 very, very different, but 2D1.1 is not. It's a low, low bar.
25 Why do you say that that one doesn't apply here?

1 MR. THOMAS: Your Honor, I'm going to be very brief on
2 this. I certainly spent some time in Mr. Kent's seat. I have
3 no disagreement on the actual law. This is my argument with
4 regards to that, is that Mr. Allison, himself, was not arrested
5 with any firearms himself.

6 The firearms that were seized in this case were seized
7 from locations that others had access to that -- and I'll be
8 making some arguments shortly about -- I think my more
9 extensive argument will come with regards to the role in the
10 offense. But I think that it's important to note -- and this
11 Court knows, has had some experience with this case over the
12 past several years, really -- that there were others with --
13 who were distributors of drugs in this particular case.

14 There were others with access to those facilities. And
15 those -- our argument and our position, with the understanding
16 what the Court has just stated about the low bar, is there were
17 others with access to those, and those firearms were possessed
18 by others, and that doesn't relate to Mr. Allison. And we'd
19 just ask the Court to sustain our objection in that regard.

20 THE COURT: Mr. Kent, what do you say in response?

21 MR. KENT: Your Honor, I would like to primarily rely
22 upon my -- it's probably the longest sentencing memorandum or
23 objection to response I've ever done. And I laid out a number
24 of different examples from the evidence in the case to
25 establish a basis for this particular enhancement and

1 specifically the nexus between those firearms and the
2 defendant.

3 The only thing that I would add that's different from what
4 I submitted previously is, since that time, Mr. Perry also
5 pleaded guilty and, of course, had a factual basis, and it was
6 certified to the truth what was in his factual basis.

7 And as to Mr. Smith, he asserted that the 25 Ora Street
8 residence was the defendant's residence, the 296 Gap Creek
9 Road, Apartment C, in Fletcher was the alternate residence and
10 used as a stash apartment, and, finally, also that they each
11 possessed the controlled substances with the intent to
12 distribute them, referring to the Fletcher apartment, as well
13 as possess the firearms therein in furtherance of their
14 drug-trafficking activities.

15 I think what the Government's previous response laid out
16 was that, again, there are a number of examples from those
17 factual bases where these guns were recovered from places the
18 defendant had dominion and control over, in close proximity to
19 drugs or a ledger or large quantities of cash, things that were
20 endemic to this drug-trafficking business.

21 And I certainly think, under that very low standard for a
22 guideline enhancement, that the Government's met its burden and
23 that this particular enhancement does apply in this particular
24 case, your Honor.

25 THE COURT: Well, with regard to the objection to the

1 enhancement in paragraph 95 regarding the firearm or firearms,
2 of the firearms that are at issue in this enhancement, based on
3 the evidence that is in the record and has been presented, are
4 firearms that were located in areas over which the defendant
5 had dominion and control and that those were locations --
6 particularly the ones just identified or mentioned by the
7 assistant United States attorney at Ora Street, as well as Gap
8 Creek Road -- were locations where the evidence before the
9 Court shows that drug-distribution activity occurred.

10 The standard under 2D1.1(b) (1) is that, once it is
11 established that there was the presence of the unlawful
12 controlled substance and the presence of the firearm within the
13 dominion and control of the defendant, that there must be
14 circumstances that show that they are clearly unrelated;
15 otherwise, the enhancement applies.

16 I don't see anything in the record that shows that they
17 were clearly unrelated. In fact, the record that is before the
18 Court shows that there was at least some degree of connection
19 between the presence of the firearms and either the storage of
20 or distribution of the firearms or the -- or excuse me -- the
21 distribution of the controlled substances or the proceeds
22 thereof. Therefore, the low bar of 2D1.1(b) (1) is met, and the
23 objection is overruled.

24 Next I want to move on to paragraph 96 and the two-level
25 enhancement for maintaining a premises. Maybe I should have

1 started there because it is the maintenance of the premises
2 that was also an element to the firearms issue.

3 But, Mr. Thomas, I'll hear from you on that one, as well.

4 MR. THOMAS: Thank you, your Honor. Again, I will be
5 brief.

6 Our objection, really, is that factually Mr. Allison has
7 always maintained that, particularly at the time that the
8 search warrant was executed, he was residing at another
9 apartment that was not his, that he was not maintaining -- he
10 was not maintaining that residence for the purpose of
11 distribution of any type of controlled substances.

12 There were some items found, and I would just note one in
13 particular that's been referenced in the presentence report, I
14 believe, a prescription that was there that was in
15 Mr. Allison's name. And that prescription, I think was not
16 noted in there, was perhaps three years old. So that's our
17 objection, and we ask the Court to sustain the objection -- our
18 objection as to maintaining that stash house.

19 THE COURT: Okay. Mr. Kent, what says the Government?

20 MR. KENT: Your Honor, again, primarily relying upon
21 my prior response, as well as the additional information
22 provided through Mr. Perry, the argument about the prescription
23 bottle aside, which was at the Fletcher apartment, there are
24 plenty of other examples within the facts of this case and the
25 statement of relevant conduct, for example, that establish this

1 enhancement, that the defendant was, in fact, maintaining
2 multiple residences that would qualify for this particular
3 enhancement.

4 I would argue that the Fletcher apartment was, in fact, a
5 stash house. Drugs were literally stashed inside the furniture
6 there. There was literally equipment, razor blades, scales,
7 baggies used to package up crack cocaine. Those crack baggies
8 that were found were very consistent with crack that was sold
9 by the defendant during the controlled buys. There were guns
10 there.

11 Of course, it was also protected by a video surveillance
12 system. A more extensive surveillance system was at his
13 residence at 25 Ora Street, where, again, there were multiple
14 guns, ammunition, drugs, cash, the ledger which the
15 codefendants -- two of them, Prophet Allah, Mr. Downs, as to
16 how much money they owed.

17 And then, of course, there were statements by
18 co-conspirators that the defendant would also have his drugs
19 stored throughout a number of apartments within the Bartlett
20 Arms, which is less than a mile from this courthouse. And they
21 named those apartments, 503, 505, 129, and 107.

22 So certainly there are a number of different examples the
23 Court could find where the defendant maintained a premises,
24 whether it's his own or having someone do it for him, where
25 they were at least maintained for the storage of drugs, if not

1 the distribution of drugs. So I would ask that you overrule
2 the objection and apply the enhancement, your Honor.

3 THE COURT: Just so I'm clear, when you talk about the
4 Fletcher apartment --

5 MR. KENT: Yes.

6 THE COURT: -- are you talking about Gap Creek Road?

7 MR. KENT: Yes, sir, 296. Yes, sir.

8 THE COURT: Well, with regard to the maintaining the
9 premises enhancement, under Subsection (b)(12), again, very
10 much like what we just discussed concerning the firearm
11 enhancement under D21.1, the bar is quite low regarding the
12 maintaining of a premises.

13 The case law from the Fourth Circuit is that, even if
14 there are other uses, other reasons, for maintaining a
15 particular premises, that, so long as the premises are used in
16 part for the purpose of facilitating the distributing of
17 controlled substance or even the proceeds thereof, that that
18 warrants the application of this enhancement.

19 And here I have to say the evidence that is before the
20 Court, including in the statement of relevant conduct and the
21 other areas that have been presented to the Court, present
22 greater evidence of maintaining a premises for such purposes
23 regarding controlled substances than I ordinarily see,
24 particularly including such things as the nature of the
25 surveillance systems, the manner in which the controlled

1 substances were, in fact, stored at such locations.

2 Each of those things show the intent to use the locations
3 relative to the controlled-substances offenses and that,
4 therefore, I believe that that evidence supports a finding that
5 the defendant maintained a premises -- actually, he maintained
6 more than one premises for that purpose within the meaning of
7 Subsection (b) (12) and, therefore, that objection is overruled.

8 Next I want to turn to the Part 3 enhancement, and that is
9 for the defendant's role in the offense.

10 And, Mr. Thomas, before I turn to you, I -- I suppose the
11 old adage is you never want your client to be the last one to
12 be sentenced in any sort of conspiracy because that gives all
13 the other codefendants the opportunity to build the record
14 against that last defendant.

15 And isn't that exactly what we have here, in that the
16 factual basis of all the co-conspirators essentially establish
17 the enhancement -- the role enhancement for Mr. Allison as a
18 manager or supervisor? How do you fight against that? How do
19 you argue against what I already have in the record, having
20 already sentenced all of these other codefendants?

21 MR. THOMAS: Judge, I don't -- first, I don't disagree
22 with the old adage. I don't. I do probably have a little bit
23 more to say about this objection than I do about the others.

24 A case that I've been doing some research this morning --
25 that it did not cite -- I have a copy for the Court. And my

1 sentencing memo, I think, outlines our position, and I'll
2 summarize it and provide the case to the Court. The United
3 States versus Slade is a Fourth Circuit case. I did manage to
4 find one Fourth Circuit case. Ultimately I didn't find the
5 ones on sealing. But the United States versus Slade, 631 F.3d
6 185, and that is a -- I believe, a 2010, 2011 case.

7 In the United States versus Slade, the facts are actually
8 quite similar to what we have here. Mr. Allison, he has pled
9 guilty. There was a conspiracy. Mr. Allison is a drug dealer.
10 That's what he's pled guilty to, and that's what we're here
11 talking about today.

12 What Slade talks about is the fact that an association of
13 individuals who receive drugs, who buy and sell drugs, does not
14 necessarily warrant a role enhancement. Mr. Allison -- and
15 what Slade talks about is that a distributor of drugs really,
16 without more, is not a -- does not warrant a role.

17 A point that I would point to is several paragraphs of the
18 presentence report which I think supports that contention,
19 paragraph 48, 49, 55, 56, and 58. In those paragraphs, they
20 all talk about transactions with Mr. Allison. And Mr. Allison
21 didn't have anybody do those deals for him. He didn't have
22 anybody deliver those drugs. He didn't have anybody collect
23 the money. He didn't have any of that. Mr. Allison did those
24 deals, and that's what we suggest is going on here.

25 Mr. Allison -- and I think the facts support -- the facts

1 what we all agree to and stipulated on. The facts support that
2 Mr. Allison supplied drugs to individuals, and then those
3 individuals did what they did with -- I presume further
4 supplied them or intended to further -- to further distribute
5 those to other individuals.

6 I agree that that supports the factual basis for the
7 conspiracy. I don't agree that it supports a basis for role in
8 this particular case.

9 THE COURT: Well, what about, for instance, where, in
10 the -- even in the PSR, it talks about Mr. Allison employing
11 lookouts for the deals that he's even involved in himself. The
12 one I remember in particular is Mr. Mohammed, who essentially,
13 in his factual basis, described himself as a runner, almost a
14 courier, for Mr. Allison, that, in essence, he -- his
15 involvement was only acting at the direction of Mr. Allison.
16 There are other parts here, I think, with regard to Mr. Odum,
17 that go into those facts, as well.

18 That's entirely different from what you're talking about
19 in Slade. I don't particularly remember the facts of Slade,
20 but, if I remember correctly what the law is, the role
21 enhancement as a supervisor, you're not -- somebody is not a
22 supervisor simply because he sells to a distributor.

23 But the facts here -- at least what Mr. Allison's
24 codefendants are willing to say about him -- say that he's --
25 he did a whole lot more in directing their action than simply

1 selling to the distributors, or selling to those who then sell
2 to somebody else. What do you say to that?

3 MR. THOMAS: Your Honor, I -- again, even -- the facts
4 of Slade talk about there were some individuals who assisted
5 this -- Mr. Slade in doing what he did. But the courts
6 found -- and that was actually a case that was reversed on
7 plain error. The Court found that wasn't sufficient.

8 I am relying on the facts in the presentence report that
9 talk about, in one of the -- I'm sorry -- in paragraph 80 of
10 the presentence report, again, I think supports our contention
11 that this was an association of individuals, yes, who sold
12 drugs. But paragraph 80, in Footnote 1, was a transaction that
13 didn't involve Mr. Allison.

14 So it wasn't Mr. Allison kind of having control over the
15 whole enterprise. Paragraph 80, in Footnote 1, involved two of
16 these individuals that we're talking about who, again, were
17 part of this association, but, when somebody needed drugs and
18 Mr. Allison couldn't be found, that transaction didn't involve
19 Mr. Allison. And I think that supports our argument, our
20 contention, that this is -- that he was not a manager or
21 supervisor of -- as contemplated by the guidelines. I would
22 point out --

23 THE COURT: I want to make sure I understand your
24 argument because it sounds like your argument is, well, there's
25 this transaction over here that he didn't control; therefore,

1 he's not a supervisor or manager. That doesn't say anything
2 about these things over here on the other side that he does
3 control. So, in other words, your argument strikes me as a non
4 sequitur. Am I misunderstanding you?

5 MR. THOMAS: My contention isn't that simply that
6 piece of evidence or that transaction is wholly dispositive of
7 the issue. But my argument, I think, is -- is trying -- is,
8 looking at the facts holistically, if I run a business or
9 Mr. Allison runs a business, Mr. Allison controls the aspects
10 of that business with those individuals, right? That's why
11 you -- that's why that person would then get a role. I mean,
12 that's why Mr. Allison would then get a role, because these
13 were his employees, they work for him, he's directing, he's --
14 you know, he's telling them what to do, he's talking about how
15 much to charge, things like that.

16 That's not -- and I think that that transaction shows that
17 these are individuals who -- what's the word I'm looking for --
18 are -- freelancing is the right word, but they're doing their
19 own thing, so he's not controlling them. He's not supervising
20 those transactions. He's not directing those particular
21 transactions.

22 And so I think -- I hope that certainly explains my
23 argument and that I certainly didn't intend for it to be a non
24 sequitur, but that's not what's happening in this particular
25 case. These are individuals who do their own thing.

1 I think counsel, a moment ago, talked about ledgers that
2 were found with people that owed him money. Okay? So again,
3 my argument with regards to that is he's simply a supplier of
4 drugs to other individuals who then further distribute them.
5 And how they do what they do is -- it's really left up to them
6 and that that doesn't warrant a role in this particular case.

7 I'm going to try to read from Slade, if you will, and it
8 cites cases in which a role was appropriate. And I think -- I
9 think they're very different from what we have here.

10 Bartley, 230 F.3d 673 and 74, where they affirmed the role
11 where the defendant directed the activities of street-level
12 drug dealers and advised them on drug-sale techniques, set
13 prices and payment terms, arranged logistics of delivery, and
14 directed the mailing and transport of drugs.

15 Talib, 55 F.3d 923, the pinpoint cite is at 932. The
16 enhancement was appropriate where a defendant acted as a
17 manager in a large, criminal enterprise, supervising the
18 preparation of marijuana for shipment and sending out his
19 inferiors to deliver the drugs.

20 And then lastly Brooks, 957 F.2d 1138. And all of these
21 were Fourth Circuit cases. Enhancement was appropriate where
22 the defendant paid employees of the drug operation and
23 effectively ran the operation while her husband was ill.

24 And I know the Court cited to at least one other
25 individual who's been here before. That certainly was one

1 individual -- I'm trying to, if the Court will indulge me, make
2 an argument in the alternative. First, I don't think a role is
3 appropriate here, but, if that's the instance, that one
4 individual who says he's a lookout -- if that's the one -- the
5 instance, then certainly a three-level is not appropriate. A
6 two-level may be appropriate. Our argument is that there
7 should be no enhancement with respect to this particular set of
8 facts.

9 THE COURT: Well, what about particularly the
10 involvement of Mr. Downs? Because in his factual basis, as I
11 recall it, he -- he essentially says the only things I did were
12 in furtherance of what I was told by Mr. Allison. In fact,
13 where you talk about, oh, they're all free agents, they're all
14 running their own little business -- well, what Mr. Downs has
15 pleaded guilty to and admitted to is really the opposite of
16 that, isn't it?

17 MR. THOMAS: So my response is this, your Honor.
18 Certainly, again, I'm going to rely on Slade. And that even --
19 those -- those instances that the Court is pointing to, I
20 think, consistent with Slade, don't warrant the adjustment.

21 Again, I will reference the extent of the adjustment -- if
22 the Court is inclined not to accept my argument, then, again,
23 that's not a three-level adjustment. That's a two-level
24 adjustment. I want to be clear. Our argument is that no
25 adjustment should apply, but, if the Court disagrees with that,

1 I believe that the facts at best warrant only a two-level
2 adjustment. And I can hand Slade up to the Court if that's of
3 any assistance to you.

4 THE COURT: Well, if there are particular parts of it
5 that you want to make sure I focus on -- I do not have a copy
6 of Slade up here. I've read it in relation to this issue
7 probably a dozen times over the years, but, if there's a
8 particular wording that you want me to focus on, I'll certainly
9 give you an opportunity to hand it up, and I'll look at that.

10 MR. THOMAS: Well, I think I summarized, again, our
11 major argument. I don't, you know, have other -- I don't feel
12 the need to direct the Court to any other particular
13 provisions. I hope the Court understands where we are with
14 regard to this particular adjustment.

15 THE COURT: Okay. Thank you.

16 MR. THOMAS: Thank you.

17 THE COURT: Mr. Kent, for the Government.

18 MR. KENT: Thank you, your Honor. I'd ask you
19 overrule the objection and apply the three-level enhancement.
20 I've read Slade, and I don't believe this case really is
21 similar to Slade, other than that they are both drug
22 conspiracies.

23 The evidence in Slade is that you have a distributor, a
24 person who's been given an enhancement, who's a member of a
25 conspiracy. And there are -- other than that, it's pretty

1 much -- there's at least five other people in the conspiracy.
2 And there's really no evidence, as the Court pointed out, that
3 anyone within that group had exercised some authority actively
4 over other participants within that, so I agree.

5 There, I would -- and I was going to talk about this in my
6 sentencing argument. I think it's rare to really see -- at
7 least over my 23 years of doing this, to see some of these
8 enhancements applied. While they sort of touch on the factors
9 that are present in the case, they oftentimes -- the cases
10 don't really fit the enhancement.

11 But I think here it does, particularly in light of Slade
12 because Slade provides a number of examples where the
13 three-level enhancement applies. And I think we have that.
14 I've already filed a -- again, thorough response to this
15 particular objection and provided you with multiple examples,
16 some of which you've recited today from some of the prior
17 pleas.

18 But it includes coordinating the activities of others,
19 which would include controlled -- the controlled drug buys with
20 the co-conspirators which was done in this case, directing the
21 terms of payment which was done, arranging the logistics of
22 delivery, transporting the drugs that was done, and, of course,
23 as stated by counsel, sending out his inferiors to deliver the
24 drugs.

25 So since the filing of my response to that, I -- we would

1 just point the Court to two other things, two defendants that
2 you mentioned. Mr. Mohammed, when he came up for sentencing,
3 he filed his sentencing memorandum. He more or less repeated
4 and maybe further illustrated some of things that are in his
5 factual basis: One, that he was picking up drugs from the
6 defendant and delivering them to co-conspirator Odum; that at
7 other times he would take the requests from Mr. Odum and
8 deliver them to the defendant; and, of course, he explained to
9 the Court that he was being paid a small amount of money to act
10 as a courier for the defendant.

11 And then at Mr. Downs's sentencing, I think what became
12 clear, what the Court recognized, is the driving force behind
13 this conspiracy was the defendant. He was the one -- Mr. Downs
14 had been involved with some fairly small-level buys, I believe,
15 of crack cocaine and heroin, small bags, small rocks. But it
16 was the defendant that really sort of pulled him back or pushed
17 him into a more significant part of the conspiracy because, one
18 date, he wanted him to pick up the money. So he directed him
19 to pick up the money from Mr. Odum because he did not want
20 Mr. Mohammed -- or Prophet Allah -- picking up that money.

21 So I think the record is replete with examples of that
22 sort of exercise of control over his counterparts that the
23 defendant really had, where he was being smart and he was
24 standing back, particularly after the raid that took place
25 after the Brandie Angel homicide, where he wasn't going to make

1 deliveries himself, so he was going to have his counterparts
2 making the deliveries.

3 This is far more evidence of control than was present in
4 Slade, and it's consistent with the examples cited in Slade
5 where the three-level enhancement does apply, your Honor.
6 Thank you.

7 THE COURT: Well, with regard to this enhancement, my
8 recollection of Slade -- and maybe this is too much of a
9 shorthand version of it, but that -- the enhancement was not
10 applied there because the defendant, Slade, was essentially a
11 bulk distributor.

12 MR. KENT: Yes, your Honor.

13 THE COURT: It was -- the Court found that, just
14 because he distributed large quantities to others and,
15 therefore, understood that they weren't going to use those,
16 that they were distributing to yet third parties, that that
17 didn't make him an organizer or supervisor.

18 The facts of this case, as I read -- and I read back
19 through maybe not all, but almost all, of the factual basis
20 documents of the co-conspirators. And they didn't tell the
21 Court that they were buying bulk quantities from Mr. Allison
22 for the purposes of redistribution. They were doing things
23 such as making deliveries at the direction of Mr. Allison,
24 picking up money at the direction of Mr. Allison, turning money
25 over to Mr. Allison, and so on. And that falls right within

1 the factors that are set out in 3B1.1 and particularly in the
2 application notes.

3 The decision-making authority with regard to those
4 transactions was done -- at least according to the
5 co-conspirators, was done by Mr. Allison. Yeah, maybe those
6 co-conspirators had some side deals going on, too. That begs
7 the question of whether or not other things that they were
8 doing were at the direction of the decisions -- the direction
9 of Mr. Allison based on his decision-making and, again, the
10 nature of the participation in the commission of the offense.

11 The co-conspirators are saying that Mr. Allison was
12 directing the portions of the conspiracy that he was involved
13 in, the recruitment of accomplices. Again, the perfect example
14 there of Mr. Downs. Mr. Downs was brought into the conspiracy,
15 according to Mr. Downs, by Mr. Allison.

16 So just going down the factors that are set out right in
17 the guideline book, it seems that the enhancement as applied in
18 the presentence report falls squarely within that particular
19 provision and that, therefore, the objection is overruled.

20 I believe the last of the objections that hasn't been
21 withdrawn has to do with there being no credit for acceptance
22 of responsibility. And with that, Mr. Thomas, I'll turn to
23 you. And particularly there what I want to focus on is what is
24 set forth in the Government's departure motion because some of
25 the factors that are set forth there -- in explaining all the

1 facts and circumstances regarding the defendant's actions that
2 are set out in that motion, there are a number of things,
3 including seeking to have perjured testimony when this hearing
4 was previously scheduled, when he had prior counsel, the denial
5 of so many substantial elements of his participation.

6 Once again, isn't this exactly what the loss of acceptance
7 of responsibility is all about under the guidelines? So having
8 said that, explain to me how this -- this set of circumstances
9 gives rise to acceptance of responsibility.

10 MR. THOMAS: Your Honor, again, as the Court knows,
11 Mr. Banks and I inherited this case, and certain things had
12 been done when we came into it.

13 What I will tell you is that the first -- when we talk
14 about -- I think the Court characterized it as the denial of so
15 many aspects of or elements of this matter that would seem to
16 be arguably uncontradicted. I won't concede that, but arguably
17 uncontradicted.

18 Those things were first -- and I met with Mr. Allison, had
19 a conversations with him, Mr. Banks has met with him. All
20 those things were done in good faith based on, certainly,
21 Mr. Allison's understanding of certain aspects of his case.
22 That's not the end of the story. The end of the story is he
23 was represented by counsel, and so they were done in good faith
24 with counsel, who said these things we can contest.

25 THE COURT: Let me stop you because I want to make

1 sure I understand your argument because I want to give
2 Mr. Allison a completely fair shake. But where you say these
3 things are done in good faith because he had been advised that
4 these were elements that could be contested, just because an
5 element can be contested doesn't mean that it is something
6 about which you can suborn perjury. It isn't something about
7 which you can present false testimony. If it can be
8 legitimately contested, it would be based on the fact that
9 evidence, truthful evidence, that you have runs counter to what
10 the Government is asserting.

11 MR. THOMAS: I appreciate --

12 THE COURT: And how is doing it differently something
13 that's done in good faith?

14 MR. THOMAS: Sure. Your Honor, I'm not avoiding the
15 Court's question. I understand and clearly have read with
16 great interest Mr. Kent's sentencing memorandum. And quite
17 frankly, I can't speak to a lot of things that occurred before
18 my involvement in this particular case.

19 Certainly, as defense counsel, I can't sit here and
20 concede that all of the factual averments that Mr. Kent has
21 made are actually true with regard to him attempting to suborn
22 perjury. I wasn't involved in that aspect of the case.

23 What I can tell the Court is this, that since Mr. Banks
24 and I have come onboard in this case, we have looked at the
25 case. We understand -- and I am not suggesting that I don't

1 understand the Court's concern. What I am suggesting is that
2 we have gone to great lengths to the extent that there were --
3 and I'll use some air quotes here -- issues to address those
4 and have tried to move forward.

5 Mr. Allison is not here today -- there's a sea change, I
6 think, from where we were six months ago to where we were
7 today. I think, and what I would ask the Court to consider, is
8 we've gotten to a place to the extent that there was an
9 argument before that acceptance of responsibility did not
10 apply.

11 We have gotten to a different place today, and I'm going
12 to ask the -- and you'll hear some more about this as we talk
13 about what's an appropriate sentence and variance and things
14 like that. We've gotten to a place where, if there was a
15 question about acceptance of responsibility, that there should
16 not be one today.

17 THE COURT: Well, let me ask you this because I think
18 this is what you just touched on, because if -- if the
19 defendant post-arrest, even post-plea, does something that
20 manifests a failure to accept responsibility, under the
21 guidelines at that point the defendant loses acceptance, loses
22 the three points.

23 Now, the defendant might do something thereafter to
24 rehabilitate his position, but that's a question of a variance,
25 isn't it? That's not a question of whether or not, in

1 calculating the guideline range, that he can somehow undo what
2 he had done in order to lose acceptance of responsibility. Is
3 that your understanding of how we navigate the guidelines?

4 MR. THOMAS: Certainly I'm not trying to avoid
5 answering the Court's question. Let me hopefully answer it
6 this way.

7 I could certainly understand, under those facts, a court
8 not awarding an acceptance of responsibility. I can understand
9 that. I'm not going to -- it's never been my practice, in
10 30 years of practicing law, to come in here and make up law,
11 although sometimes, sitting on this side of the table, I'd like
12 to do that. I understand the Court's position.

13 THE COURT: Well, it's not so much a position. I'm
14 just saying do you disagree --

15 MR. THOMAS: I respect what the Court is articulating.

16 THE COURT: Okay.

17 MR. THOMAS: Let me say this with regards to the
18 allegation that perjury was suborned because I can't concede
19 that here today. I've been practicing for 30 years in federal
20 courts, primarily in Atlanta, you know, and other places in the
21 southeast. Mr. Banks, same thing.

22 Certain things -- I have never tendered to the Court a
23 witness who I believed, based upon my factual investigation --
24 which I think is the duty of every attorney -- a client -- a
25 witness that would testify to facts that were false.

1 So I'm going to fall back on -- and I hope the Court
2 understands what I'm saying, that the objections that were made
3 to the presentence report prior to Mr. Banks arriving --
4 Mr. Banks and I arriving in this case were done after
5 consultation with Mr. Allison and in conjunction with counsel.
6 I'm going to ask the Court to again consider that. Again, I am
7 going to be very clear for the record that I am not conceding
8 Mr. Allison or anybody else attempted to suborn perjury.

9 And I think that, based on all of the things that have
10 occurred in this case, based on where we are today, Mr. Allison
11 has withdrawn the objections that I -- I clearly think would
12 have warranted -- without question would have warranted a
13 denial of acceptance of responsibility.

14 We've -- there were objections -- I mean, there were --
15 there were facts that were agreed to between Mr. Allison's
16 prior counsel and Mr. Kent, facts that were discussed in court
17 with the -- with the -- I believe another judicial officer that
18 were agreed to, and then there were objections filed as to
19 that.

20 I think, had those been allowed to stand and to go
21 forward, if we were sitting here arguing about, you know,
22 Mr. Allison should be at, you know, a Level 100, you know, he
23 should be at 102 months because he didn't do all that stuff,
24 clearly, without a doubt, if we had gone forward on those
25 objections, I would better appreciate and understand the

1 Court's position that that would not warrant an adjustment for
2 acceptance of responsibility.

3 Clearly, with regards to the obstruction issue, when we
4 agree to facts that are inconsistent with what was done in a
5 previous proceeding -- we didn't really have a basis to come
6 here today and stand here and argue to the Court that there
7 should not be an adjustment for obstruction. If we had gone
8 forward in that regard, I think that's a clear line -- clearly,
9 we would -- Mr. -- I would have a difficult time standing here
10 and arguing that Mr. Allison would be entitled to acceptance if
11 those were the facts.

12 Those other things that occurred with the consultation of
13 counsel and, in large part, because of those objections that we
14 discussed that I've withdrawn, because they were offered, then
15 it was necessary to have or potentially have these hearings.
16 Had that not happened -- and again, those are all decisions
17 that are made by people to assist Mr. Allison through this
18 process.

19 Again, I'm asking the Court -- I appreciate the Court's
20 commentary and suggestion, but I'm asking the Court again,
21 based on where we are today, those objections don't exist
22 anymore. Had they not existed in the first place, we wouldn't
23 be having this conversation. I think Mr. Allison better
24 understands that, and I'm asking, based on where we are today,
25 to award Mr. Allison the adjustment for acceptance of

1 responsibility.

2 THE COURT: Well, and you keep referring to "where we
3 are today," and that goes to the question that -- I'm trying to
4 get an answer from you, and I'm not sure I've heard it yet.
5 And I apologize if I sound like some sort of frustrated old law
6 professor or something, but --

7 MR. THOMAS: And I apologize if you feel like I'm
8 equivocating. I'm not trying to do that, so I apologize, as
9 well.

10 THE COURT: In the situation -- which I have seen many
11 different flavors of this one. The defendant does something
12 unlawful, gets arrested, burns the evidence, does something of
13 an obstructive nature. Then, after talking to his attorney, he
14 realizes, oh, that was a big mistake. And then he is -- goes
15 before the Court, he pleads guilty, he says, yes, I did it.

16 And at that point -- I've seen that in various forms and
17 that is an enhancement for obstruction, but a deduction for
18 acceptance of responsibility because, by the time he comes
19 before the Court, he recognizes the error and, therefore,
20 accepts responsibility for it.

21 As I understand the facts of this case -- well, let's not
22 even talk about this case yet. Let's talk about what the law
23 is. But if you have that same thing, where you have the
24 defendant commits some transgression, burns the evidence --
25 therefore, he is going to get an obstruction enhancement -- he

1 comes before the Court, he pleads guilty, but then, after
2 pleading guilty, he denies relevant conduct -- he's saying, oh,
3 yeah, I -- I admit that I did X, but I didn't do A, B, C, and
4 D, which are all in the relevant conduct -- under those
5 circumstances, the defendant gets the enhancement for
6 obstruction and doesn't get a deduction for acceptance of
7 responsibility.

8 Even if that defendant thereafter, prior to sentencing,
9 shows up at sentencing and says, yeah, I've seen the error of
10 my ways, and, yeah, I admit I did A, B, C, and D, he still
11 doesn't get acceptance of responsibility because he put the
12 Government to the task of having to buttress everything
13 regarding A, B, C, and D.

14 It seems to me that that third scenario that I just
15 described sounds like what you're trying to describe here by
16 saying, but as we stand here today, Mr. Allison should get
17 acceptance of responsibility. But it sounds like you're
18 describing that third scenario, which, under the law, I don't
19 understand that he would.

20 So I want to give you another chance. Is my expression of
21 the law incorrect or am I misunderstanding the factual argument
22 that you're making?

23 MR. THOMAS: I think you're expressing the law as
24 correct. I disagree, I think, with the factual analysis of
25 where we are. And perhaps I have not been clear. I don't mean

1 that because of where we are today, that stuff should be
2 ignored. I think -- that stuff happened.

3 And again, let me be very clear. I am not misleading, and
4 those witnesses didn't take -- the witnesses didn't take the
5 stand and hear it didn't happen. I am not conceding to those
6 facts. I don't know what those witnesses would have said.
7 There's no testimony about -- there's nothing in the record
8 about that, so I'm not conceding that there was a subornation
9 of perjury.

10 I don't know if those people -- if the facts are correct
11 with what Mr. Kent said. I don't know if those people -- if
12 they were going to come in here and testify factually correct
13 that Mr. Allison had anything to do with it. I just don't
14 know. And so I don't think that there's a sufficient -- first,
15 with respect to that, a sufficient, factual record with regards
16 to that, those particular facts that he's alleged.

17 What I am saying is that if I, as counsel, or anybody else
18 as counsel, agrees to a set of facts in a factual basis and
19 comes back later as counsel and says, yeah, that stuff didn't
20 happen, my argument is simply this: That is not all on
21 Mr. Allison. That's my argument.

22 Mr. Allison didn't take the stand at a previous hearing
23 and say I didn't do that. It just didn't happen. And so when
24 I say "where we are today" -- and again, I want to be clear.
25 Again, I think everybody knows now we weren't involved in that

1 process.

2 THE COURT: Okay. I need to get clarification from
3 you, though, because you say Mr. Allison didn't take the stand
4 and testify to that. However, what he did do -- and it's
5 expressed in the record -- is he came to be interviewed by --
6 he came to debrief with Government officials and with
7 investigators. And it was within that context in which he
8 denied various elements of his offense conduct. That's -- as
9 far as acceptance of responsibility is concerned, that's just
10 as serious, isn't it?

11 MR. THOMAS: That's actually, I think, a little bit
12 easier for me to address, right? In the plea agreement,
13 counsel specifically carved out -- I mean, the agreement
14 between the parties is he could specifically carve out certain
15 aspects of the relevant conduct.

16 That -- I think what the Court just described is not
17 uncommon. I mean, that happens every day. Yeah, we did five
18 kilos, but that other transaction I didn't have anything to do
19 with. I'm just -- you know, I'm not citing to a specific
20 factual scenario in this case.

21 That is, again, not uncommon at all, that in those types
22 of interviews -- of which I participated in hundreds, if not
23 thousands -- where the defendant says, yeah, I did that, yeah,
24 you got me, yeah, I'm a drug dealer, but, when they say I did
25 X, Y, and Z, I didn't do that.

1 THE COURT: Okay. Let's be a little bit more
2 specific. We're talking in a vacuum.

3 Specifically, just looking here, one of the things that
4 comes to mind -- and I'll use it as an example -- where, in the
5 debrief, Mr. Allison says that he -- well, he denied ever being
6 involved in any transactions that involved Mr. Downs.
7 Mr. Downs comes back ultimately and says that's not true,
8 there's no -- no bit of that that's true, because Mr. Downs
9 admitted to all sorts of very specific conduct that he did, not
10 only with Mr. Allison, but on behalf of Mr. Allison.

11 There it was not something where, in the plea agreement,
12 Mr. Allison said, yes, I admit X and Y, but I deny A, B, and C
13 because I didn't do it, and then there's no evidence that A, B,
14 and C happened. Here A, B, and C involved Mr. Downs, and
15 Mr. Downs said, yeah, it happened, yeah, I did that, and, yeah,
16 I did that with Mr. Allison and for Mr. Allison. But yet
17 Mr. Allison denied it in the debrief.

18 Isn't that a perfect example of a failure to accept
19 responsibility?

20 MR. THOMAS: As a practical matter -- and I'll talk
21 about the legal -- those types of situations are not uncommon,
22 where there is a factual dispute about what happened.

23 Now, I'll be honest with you, Judge. I'm not today -- I
24 won't spend the time to look for it, but when that occurred,
25 when that conversation occurred -- but the -- but where we are

1 -- I hesitate to say this anymore. Where we are now is that
2 he's come to court and said I agree with the determinations
3 with respect to relevant conduct that I agreed to. So he's
4 agreed to that.

5 And this is not -- and I heard everything the Court just
6 said, but that's not a denial of relevant conduct. That is not
7 a denial of him coming to court and saying, yes, I am a drug
8 dealer, yes, I did these amounts, yes, I did things with other
9 people.

10 I just -- as a practical matter, those were situations
11 that occur all the time, and that's -- that was even
12 recognized -- I'm not saying Mr. Kent agrees with it, but that
13 was even recognized in the negotiations with the parties where
14 they said, look, I'm not going to -- I won't agree that you're
15 going to prove these amounts, these drug amounts that are going
16 to trigger certain mandatory minimums and going to trigger
17 certain offense levels. I agree to that. How all that
18 happened, I'm not agreeing to that. So we carve that out --

19 THE COURT: There's a difference between not agreeing
20 to it and affirmatively saying something contrary. One is
21 saying to the Government prove your case; the other one is
22 saying the facts here are different. One is a false statement,
23 and the other one is not.

24 MR. THOMAS: We've never gotten to the point with
25 respect to that, where we've said -- I mean, give -- given

1 his -- given his withdrawal of those objections, we've never
2 gotten to the point where we said to Mr. Kent prove your case.
3 We've come in, we waved the white flag, and said we did these
4 things. We did these things.

5 And I agree, the mechanics of them are -- certain
6 mechanics are important in terms of how those things were done,
7 but that's not a denial -- I mean, that's not I am denying
8 acceptance of responsibility. That's just not -- I don't agree
9 that that warrants a -- not giving Mr. Allison acceptance of
10 responsibility, particularly if these things were done in
11 anticipation of the plea agreement or in the run up to the plea
12 agreement, to the extent that they were done with counsel
13 there, with the advice of counsel about his understanding at
14 the time of the facts.

15 That's not -- I just don't -- I can't agree that that
16 is -- warrants a denial of an adjustment for acceptance of
17 responsibility.

18 THE COURT: Okay. Anything else on that point?

19 MR. THOMAS: Judge, I think I'm done.

20 THE COURT: Okay. Mr. Kent.

21 MR. KENT: Your Honor, I think two of the most
22 difficult issues in this case for the Government were
23 acceptance, as well as the 5K. I think in some ways they're
24 really intertwined. As a prosecutor, I think what Mr. Thomas
25 was talking about was, especially in drug cases, conduct folks

1 will admit to, whether it's in their case or their debriefs,
2 oftentimes also become intertwined.

3 And cooperation is a process. We call it pulling teeth.
4 We tell defendants, don't make me into a dentist, I don't want
5 to pull your teeth. Maybe your codefendants are going to get
6 to the table quicker, and they're just going to give up to the
7 information, which we then can corroborate.

8 Sometimes that is because folks are -- it's IQ level, it's
9 education, it's been in the street too long, been in and out of
10 the system too much, they're -- oftentimes they're in denial.
11 Other folks are used to being in charge, which I would submit
12 is the defendant's case.

13 So they can't help to try to -- and I'm not saying this
14 goes against acceptance, but the phrase I would use is game the
15 system, you know, not just openly admit things to the DA, see
16 what the DA can prove, and what they can and can't get away
17 with.

18 And through the 5K, you sort of see the tortured process
19 of that happening and to the point where I said now he's done
20 something -- which I'll speak on in a moment -- that I believe
21 is rehabilitative. I think that's what you were asking about
22 earlier.

23 That being said, there was a sea change in the sense that
24 a number of objections, serious objections, were withdrawn, and
25 the defendant now is openly admitting much of the conduct that

1 forms the basis of his involvement in the conspiracy. And
2 certainly the Government, regardless of being put to the task
3 of doing 70-page responses and things like that, is
4 appreciative of.

5 In addition, although, again, it was sort of a tortured
6 path to get there, the reason -- and we can discuss this
7 shortly, but the main reason I did the 5K is because of his
8 post-April 2020 -- which was when this was previously set --
9 cooperation, which was very significant, in Swain County
10 detention center.

11 For me, with my experience with Mr. Allison, that was a
12 big sort of break. Certainly I appreciated withdrawing
13 objections and shortening this hearing, but that cooperation
14 with prosecution was a big break with what had happened, who he
15 had been before. So I view that as a rehabilitative thing.

16 So I know it's sort of possibly a tortured argument. I
17 understand the scenarios your Honor was bringing. Oftentimes I
18 may have even sat here asking that defendants do get
19 acceptance. And this case is probably, for most, would say too
20 far of a push. And with the exception of that rehabilitative
21 cooperation, I would probably be in that boat, as well, saying
22 don't give it to him.

23 But that is something that changed since the filing of my
24 response, so I'd ask you to take that into account, and I'll
25 leave it to your Honor's discretion as to whether or not to

1 grant acceptance, but I would ask you to seriously consider
2 that cooperation, your Honor.

3 THE COURT: Well, and -- and let me start throwing
4 some of the questions to you that I was throwing to Mr. Thomas,
5 and that is this whole concept of rehabilitative acceptance.

6 Is your understanding of the law that, where a defendant
7 post-plea has done something -- whether it's in a debrief or
8 with regard to physical evidence destruction, whatever -- does
9 something that manifests a lack of acceptance of
10 responsibility -- and not to say that this scenario applies
11 here, but, as you called it, gaming the system -- and we've
12 seen many defendants of this nature, both you and I have --
13 gaming the system, can the defendant get away with these things
14 in order to minimize the sentence? And then when it doesn't
15 work, it's sort of like, okay, I surrender.

16 Does that defendant get acceptance of responsibility? And
17 the answer is -- almost across the board or across the board,
18 the answer is no. It's really hard to rehabilitate a complete
19 failure of acceptance of responsibility when the defendant
20 failed to accept responsibility post-plea.

21 It sounds to me like you're saying, but there are
22 exceptions. And maybe there are, but what are the parameters
23 of an exception there, and how does Mr. Allison fit into those
24 parameters?

25 MR. KENT: So I agree with your analysis of the law.

1 I would usually be the person that would just say at that
2 point, as I did in my response, enough is enough, I cannot
3 support your request for acceptance of responsibility. Too
4 much has happened, too much water has come under this
5 particular bridge. It's no longer stable.

6 And I'm -- I would say, as early as the recent -- a week
7 ago I still wasn't sure I was going to do the 5K in this case
8 because of all these incidents that had taken place and that I
9 have to get up here, as an officer of the court, as a
10 representative of the United States Government, and say whether
11 or not I believe this was good enough.

12 How do you ask for a 5K -- and it's obviously going to
13 affect acceptance of responsibility at a time when -- can you
14 say the defendant has been totally honest? Can you say he's
15 been completely timely? And I address those issues in there.

16 I have never had a circumstance where a defendant has then
17 done something -- really, unrelated to the Government --
18 reported a serious crime where people could have got hurt after
19 all of that water under the bridge. And that was really,
20 again, the key for me.

21 So I'm not sure what the parameters would be. I have to
22 imagine there are going to be circumstances -- well, this is
23 the first time I've ever had this. Somewhere in the country,
24 where someone is going to do such a bad job at acceptance, that
25 there's no argument that they in any way accepted

1 responsibility, but then something happens that demonstrates a
2 change. And I think you oftentimes refer to it, your Honor, as
3 either a rehabilitative effort or something that marks them
4 beginning to move down the path of the straight and narrow.

5 And I'm not saying I have a tremendous amount of
6 confidence that Mr. Allison will stay on that path. I'm going
7 to be asking for a very significant sentence that will probably
8 keep him from getting on that path for quite some time. But
9 this was such a break. I was shocked when the officers called
10 me to say who had reported this and that he was cooperative.

11 So I'm not sure what those parameters are, and that's
12 why I can't stand here today and say he's overcome all his
13 issues with acceptance, but I also can't ignore the fact that
14 he began to go down a different path, which was very different
15 from everything I have ever encountered from this defendant
16 during the course of this case. And I'll leave it at that,
17 your Honor.

18 THE COURT: Well, here's the problem that I'm having.
19 And maybe if I take long enough, you and Mr. Thomas
20 will convince me that the law is a little bit different than
21 what I thought it was.

22 Where you have a defendant who does something that is
23 contrary to accepting responsibility -- as you called it,
24 gaming the system -- if a defendant simply comes back and
25 realizes, oh, that didn't work, my bad, I repent, yeah, I --

1 I'll admit it now, if that gets -- if that gets that
2 hypothetical defendant acceptance of responsibility, then the
3 law encourages gaming the system and, therefore, I know that's
4 not the law.

5 MR. KENT: Correct, your Honor, and I'm not advocating
6 that it is. Again, I've always looked at it as you don't just
7 get to come in and say, oh, sorry. And so like the robber who
8 said, well, I gave the little old lady her purse back, so we're
9 even -- like, no, the problem is the action you took prior to
10 this attempt to rehabilitation.

11 THE COURT: But it seems to me, if there is some sort
12 of opportunity of rehabilitation, of acceptance of
13 responsibility, that that rehabilitative act has to
14 substantially outweigh whatever it was that occurred post-plea
15 that the defendant did or said that caused him to lose
16 acceptance of responsibility.

17 I don't know that I have ever had a case in which I have
18 had to weigh what is that rehabilitative act. I'm having a
19 conceptual problem with that rehabilitative act being something
20 that's completely unrelated to this case. How do you measure
21 those? I mean, to use the worn-out cliché, isn't it apples and
22 oranges? It doesn't pertain to what was done here that would
23 have caused the loss of acceptance of responsibility.

24 MR. KENT: And I agree, your Honor. I'm not here
25 advocating you now go ahead and give him acceptance from saying

1 it's -- I'm having the same difficulty. I would be asking that
2 you consider that as hopefully him turning on the right path.

3 I know in the past, when you've talked to defendants about
4 hopefully getting on that path, for most defendants it is a
5 matter of completely turning their back on what they had done,
6 pleading guilty, admitting their responsibility, showing up at
7 sentencing, being ready to go forward, and not playing games,
8 not gaming the system.

9 So compared to those defendants, I supported not giving
10 him acceptance of responsibility. And heading into that
11 sentencing hearing, there were additional things that happened
12 right up to that sentencing hearing that I believe went against
13 giving him an acceptance of responsibility.

14 So all that -- the only position I'm taking is I'm asking
15 you to consider what he did. I understand that it is not
16 related to this offense. There is a very good argument that it
17 is not substantial enough to outweigh all the things he did
18 that went towards denying his acceptance of responsibility.
19 I'm just asking this Court -- for me, what he did just was sort
20 of a light-going-off moment. It was a significant change in
21 position or change in path from the usual dealings I've had
22 with the defendant in this particular case.

23 I don't know if that's enough to get past because I've
24 never in my career had so many incidents, let alone these types
25 of incidents, that go against acceptance of responsibility.

1 Occasionally it's, you know, I pled and I -- before I went into
2 custody, I used drugs. You know, there's an argument that's a
3 denial, but there's an argument that it's not.

4 And occasionally I've had defendants for far less --
5 Mr. Wright in this case cooperated also against Mr. Chavez, and
6 Mr. Chavez continued to conspire to deal drugs while in
7 custody, committing the same type of offence. That was one
8 thing, a serious thing, but one thing significant enough to
9 deny acceptance of responsibility.

10 I understand, and I've argued there are multiple things
11 that are a basis to denying acceptance of responsibility in
12 this case, but I just want to point out that he does have
13 something on the positive side of the ledger. And
14 unfortunately, this is a new circumstance for me, a new
15 experience. I'm not here arguing, and I'm not even sure that
16 this is enough to outweigh what he has done in the past, your
17 Honor.

18 THE COURT: Okay. Mr. Thomas, let me turn back to you
19 on this because, the further we wade into this, the clearer it
20 becomes to me that either this is a rehabilitative act that is
21 insufficient to earn the reduction for acceptance of
22 responsibility, but may be a factor for a downward variance as
23 an -- it's not an imperfect departure, but an imperfect
24 application of that provision, or it is enough to warrant a
25 three-level reduction with the proviso that, since the light's

1 on or the light's off -- either he gets three levels down or he
2 doesn't and that this somehow falls somewhere in between, that
3 the defendant would get the three-level deduction subject to
4 the argument that, you know, his rehabilitative act really
5 wasn't worth all three points.

6 Which of -- which of these is this, why, and why should I
7 accept that?

8 MR. THOMAS: So can I preview my argument to the Court
9 depending on the Court's finding on this issue? If the Court
10 were to deny -- and I think it should, I feel that very
11 strongly, probably a little bit more strongly than I've felt
12 some of the other arguments I've made today. If the Court were
13 to deny the adjustment for acceptance of responsibility, in
14 five minutes absolutely I will be making the argument that a
15 departure pursuant to 5K and to the variance issue as to 3553
16 should be substantially more than the Government has asked for.
17 I will absolutely be making that argument in short order.

18 If I could -- I hope that answers the question. If I
19 could just address a couple other things that the Court has
20 said.

21 I don't think -- these facts warrant -- and just like
22 Mr. Kent said, there are instances where people do things --
23 the use of marijuana prior to -- after pleading guilty, you can
24 get acceptance snatched for that. I've never seen it happen,
25 although it happens, the use of -- you know, people who have

1 problems use drugs, and there's a lot more stress after you
2 plead. It -- you could absolutely do that, and it doesn't
3 happen.

4 This is my argument in this case, Judge. And I'm not -- I
5 want to be clear I'm kind of cutting out the subornation of
6 perjury, the allegation that that occurred.

7 It seems like we're focused on is what actually, factually
8 happened in this case that there's no dispute about, and that
9 is that a sentencing memorandum was filed that was inconsistent
10 with what Mr. Allison came into court and pled guilty to.
11 That -- everybody agrees that happened, that was a de -- I
12 mean, that was a denial of certain aspects of relevant conduct.
13 It would have changed -- there was a sea change from what was
14 contemplated by the parties.

15 My argument is this. Defense attorneys do what defense
16 attorneys do, and I'm a defense attorney. That -- that -- a
17 denial of acceptance of responsibility for Mr. Allison is not
18 warranted where counsel takes a legal -- a legal position with
19 respect to relevant conduct that is not consistent with the
20 agreement of the parties. And then -- and then, when the
21 consequences of that are explained, and there's a conversation
22 about, well, you know, this is what that means, and then a
23 decision is made, well, we'll withdraw that stuff if it's
24 wrong.

25 But when counsel makes a -- what they believe to be a

1 legally meritorious argument, it is wrong to punish this
2 defendant with the acceptance of responsibility. Now, the
3 Court --

4 THE COURT: I need to stop you because I'm not talking
5 about anything where his prior attorney may have misunderstood
6 what the facts are and, therefore, filed a sentencing -- the
7 original sentencing memorandum with things that are incorrect.
8 I'm not talking about that. I'm talking about the things that
9 are in the record about debriefs, denial of relevant conduct by
10 Mr. Allison, not in some sentencing memorandum.

11 Mr. Allison isn't going to be penalized for his prior
12 attorney misunderstanding something, just like he's not going
13 to be penalized if it turns out you misunderstood something.
14 That's not what I'm talking about. I'm talking about the
15 actions and the statements of Mr. Allison, including some of
16 the things he said that were caught on jail calls. And
17 you're -- I'm sure you're well aware of what I'm talking about
18 there.

19 MR. THOMAS: Judge, throughout this process -- and I
20 appreciate the Court's kind of helping me narrow that. We're
21 not talking about a legal position that was taken. But what
22 I'm going to, again, reiterate to the Court is there were
23 certain carve-outs and understandings in advance of Mr. Allison
24 coming to court about these things that we're just not going to
25 agree on.

1 Throughout this entire process Mr. Allison was guided, had
2 the advice of counsel, and took these positions and did these
3 things in these debriefings. And this is not a situation
4 where -- because the Court used this term, and I want to talk
5 about the term you used.

6 When it doesn't work -- this has never been a situation
7 where we got to a point where it didn't work. We got to a
8 point where people came in, reviewed everything that had
9 happened in this case, and said this is not a -- we're not in a
10 place that's legally viable.

11 And so I do think that is consistent with acceptance of
12 responsibility. I mean, all the time attorneys, you know,
13 counsel with the client, they develop further facts, and they
14 say, you know, we need to withdraw this objection and move
15 forward.

16 We talked about -- the other term I heard was actions
17 which substantially outweigh kind of what took place that would
18 warrant acceptance of responsibility. I don't think there are
19 any cases that talk about that, but we'll just talk about that
20 for a minute.

21 What I would suggest -- if there's where we're kind of
22 looking, about something that substantially outweighs,
23 Mr. Allison -- and understanding the state of the record six
24 months ago, came in and, through counsel, authorized us to
25 withdraw these objections. And I think that's indicative of

1 acceptance of responsibility.

2 And I'm not standing here saying, you know, Mr. Allison
3 had done some things -- and, you know, he's going to pay the
4 price for that. But that is not -- that doesn't warrant the
5 denial of acceptance when we finally get to the sentencing
6 hearing, when we prepare, when we've had meetings with him and
7 conversations about things that have taken place, and say
8 that's not -- you're not going to prevail on that issue.

9 That's not -- so it's not -- I don't think it's a
10 situation where it didn't work, where he's on the stand and
11 going, yeah, you know, I didn't sell all that dope, I didn't do
12 this, I didn't do that. He's putting the Government to its
13 test, to its burden, and we listen to five or six witnesses who
14 go, yep, that's what happened, that's what happened, that's
15 what happened. And then we stand up at the sentencing hearing
16 and go, you know what, Judge, yeah, it didn't work, we need to
17 get acceptance of responsibility. That's not the facts here.

18 The facts here -- we walked in today, we've had
19 conversations with Mr. Kent about where we were on this. And I
20 understand that's not dispositive for the Court and, clearly,
21 Mr. Kent didn't agree to anything. I wish he had. We talked
22 about that, but that's not what happened.

23 What happened is that, very simply -- and I'll sit down --
24 Mr. Allison has accepted responsibility for his conduct in this
25 particular case, and he should get the adjustment.

1 Obviously -- I hope we'll be addressing his substantial
2 assistance in a minute, and at some point the Court will make a
3 determination as to what is an appropriate, a reasonable
4 sentence that should be imposed.

5 I think that all of these factors can be -- should the
6 Court still have lingering concerns about all of those things
7 that have taken place up till today, the Court can factor those
8 in. But in terms of whether the adjustment applies for
9 acceptance of responsibility, I believe it should apply.

10 THE COURT: Okay. Anything else?

11 MR. THOMAS: No, your Honor.

12 THE COURT: Well, with regard to this objection as to
13 whether or not the defendant is entitled to a reduction for
14 acceptance of responsibility, I find this to be a particularly
15 difficult question in applying section 3E1.1 because, as it
16 says right in the application notes, if a defendant falsely
17 denies or frivolously contests relevant conduct that the Court
18 determines to be true, that defendant has acted in a manner
19 inconsistent with acceptance of responsibility.

20 And the particular things in the record -- not referring
21 to some statement by counsel, but particularly some of the
22 things that are set forth in the Government's motion -- would
23 seem to fall within that. However a different part of the
24 application, though, does refer to a factor of the post-offense
25 rehabilitative efforts of the defendant -- even though that's

1 in a somewhat different context -- and the timeliness of the
2 defendant's conduct in manifesting the acceptance of the
3 responsibility.

4 That tells me, much like what Mr. Kent has argued here --
5 and Mr. Thomas has argued, as well, from a somewhat different
6 angle -- that the things that I am focusing on as constituting
7 a denial of acceptance of responsibility are subject to actions
8 by the defendant rehabilitating that wrongful course of action.
9 It's complicated somewhat by, here, the rehabilitative course
10 of action being completely unrelated to this case.

11 I'm also troubled by the fact that it is clear to me that
12 any such rehabilitative action must substantially outweigh what
13 the action was that manifested in a denial of acceptance of
14 responsibility; otherwise, this Court would be encouraging
15 every defendant to try to avoid responsibility and then come
16 back at a later time to accept responsibility. And that
17 undermines the entire guideline system. However, 3E1.1 is
18 clear in that, unlike in other provisions, where there's some
19 middle ground, either the reduction for acceptance of
20 responsibility is granted or it's not.

21 And, therefore, what I will do is I will sustain the
22 objection, I will grant acceptance of responsibility, but I
23 will do it with the proviso that that is without prejudice to
24 an argument or a finding that the rehabilitative action on the
25 part of the defendant would not necessarily have been

1 sufficient to have earned all three points. And that needs to
2 be taken into account with regard the 3553(a) factors.

3 Having said that, Mr. Kent, obviously, under 3E1.1(b) of
4 the third point of acceptance of responsibility is within the
5 control of the Government with -- in light of the Court having
6 found acceptance of responsibility. So what says the
7 Government with regard to the additional point?

8 MR. KENT: Your Honor, I would move that the
9 defendant be given that additional point.

10 THE COURT: With that, then, the three-level reduction
11 for acceptance will be allowed.

12 Are there any other issues regarding the offense level or
13 the calculation of the guideline range that we need to address?
14 Anything for the defendant?

15 MR. THOMAS: Your Honor, Mr. Kent and I had a
16 conversation. There's some discussion in the presentence
17 report about Mr. Allison being a career offender, and my
18 sentencing memo doesn't address this, and I don't think his
19 does.

20 I think it's the Government's position that the career
21 offender does not apply because of a change in the law, so I
22 guess I'll take some direction from Mr. Kent if that's their
23 position.

24 And I guess, just for the record, to the extent that the
25 probation report does identify Mr. Allison as a career

1 offender, I'd just ask the Court to entertain, without any
2 further argument, just our -- perhaps an untimely objection to
3 that given my conversations with Mr. Kent.

4 THE COURT: Well, Mr. Kent, what do you say about
5 that?

6 MR. KENT: Given the findings of the Court so far with
7 regard to the application of the drug quantities, the
8 enhancements, your Honor, it's my anticipation that the
9 argument's moot to the extent that that base offense level
10 would be higher than the base offense level under the career
11 offender guideline. And if it did get -- even if it was at
12 play, and it's not -- because it's not at play, there's no
13 reason to reach whether or not conspiracy counts as a
14 controlled substance, if that's anymore under the guidelines,
15 your Honor.

16 THE COURT: Well, with regard to the issue of whether
17 or not the defendant is designated as a career offender, first
18 of all, I will note that it does appear that, in the
19 presentence report, that the defendant has sufficient
20 predicates to be counted as a career offender; however, the
21 calculation of the offense level on pages 26 and 27 of the
22 presentence report do not identify the defendant as a career
23 offender.

24 My understanding of current case law is, without the
25 designation of the defendant as a career offender, with the

1 presentation and statement of what the predicate offenses are,
2 that the defendant cannot be sentenced as a career offender.

3 I will note that adjusted offense level, as calculated in
4 the presentence report and as found by the Court, is still at
5 43. If the defendant had been found to be a career offender,
6 it would have been 37. Therefore, the adjusted offense level
7 being higher than the career offender offense level, the career
8 offender designation became irrelevant to the process.

9 I will note that, if this matter comes back at any point
10 for resentencing, that I would fully expect that the probation
11 office would do a supplemental presentence report that would
12 address the career offender issue if it becomes relevant, but
13 at this time I don't see that it's relevant.

14 MR. THOMAS: That's all as far as the defendant's
15 concerned, your Honor. I agree with all of that.

16 THE COURT: Is there anything else regarding the
17 presentence report that we need to address? Anything from the
18 defendant?

19 MR. THOMAS: May I have just a moment, your Honor?

20 THE COURT: You may.

21 (Discussion off the record.)

22 MR. THOMAS: Thank you, your Honor. We have nothing
23 further to address in that regard.

24 THE COURT: Okay. Mr. Kent, anything else on the
25 presentence report for the Government?

1 MR. KENT: No, your Honor. Thank you.

2 THE COURT: With that, the Court will accept the
3 presentence report as written, with the exception of the
4 objection that was sustained regarding paragraph 102, that the
5 defendant receives the three-level reduction for acceptance of
6 responsibility.

7 Therefore, the Court will find that the total offense
8 level in this matter is Level 40, and the criminal history
9 category is Category 5. Based on that total offense level and
10 criminal history category, the Court will conclude, as a matter
11 of law, that the guideline range that applies in this case
12 calls for a term of imprisonment between 360 months and a term
13 of life imprisonment.

14 Mr. Thomas, did I calculate that correctly?

15 MR. THOMAS: Based on the Court's findings, I believe
16 those are the guideline calculations, your Honor.

17 THE COURT: Do you agree, Mr. Kent?

18 MR. KENT: Yes, your Honor.

19 THE COURT: The next thing I want to take up is the
20 Government's motion for a downward departure.

21 Mr. Kent, I'll have to say that I don't believe I have
22 ever seen a 21-page motion for downward departure before. Is
23 there anything that you want to say in supplement to what you
24 have had me read?

25 MR. KENT: No, your Honor. I apologize for the

1 length. Again, it was a reflection of a tortured path we've
2 taken to get here today. But I have nothing further unless you
3 want me to answer some questions, your Honor.

4 THE COURT: Well, the length of that motion is only
5 indicative of the length of the substance.

6 Mr. Thomas, do you want to say anything with regard to the
7 Government's motion?

8 MR. THOMAS: Your Honor, you have -- I'd ask the Court
9 first to grant it. I do want to -- and I don't know if this is
10 the proper time to address the extent of that departure. I
11 don't know if the Court wants to -- different courts do it
12 differently with respect to if we want to argue for the
13 sentencing -- the appropriate sentence at this time. I'll just
14 take some direction from the Court with regards to that.

15 THE COURT: Well, to the extent you want to argue
16 anything that has to do with the motion within the confines of
17 5K1.1, now is your opportunity to do it.

18 MR. THOMAS: Thank you, your Honor.

19 THE COURT: Now, some of those things you may want to
20 defer to an argument regarding sentencing in the form of a
21 variance, rather than on a departure, but I leave that to your
22 discretion as to where you want to say those things.

23 MR. THOMAS: Thank you, your Honor.

24 Let me just talk a little bit about my view of
25 Mr. Allison's cooperation. And I apologize in advance if the

1 Court hears this again briefly when we talk about a reasonable
2 sentence.

3 Your Honor, we have talked at length today about the
4 challenges that this case has presented, I think both for
5 Mr. Kent, for us, and obviously for the Court. What happened
6 on this particular day, again, I think is indicative, first, of
7 where Mr. Allison is now today. He had made some efforts to
8 cooperate again when Mr. Banks and I came onboard. We had been
9 working with him on that.

10 And I've been doing this -- I think I referenced it --
11 about 30 years now as an attorney, first as a state prosecutor
12 with the US attorney's office, been doing this for about 10 or
13 11 years. Prior to that, I was a police officer. I have never
14 seen this type of cooperative efforts and the fruit that it
15 yielded in any of those capacities. And I've sat in several
16 seats and worked with people who have cooperated, and I've
17 never seen this type of cooperation.

18 This is a case where, if Mr. Allison had not done what he
19 did in this case, where the next day or at some point after
20 these individuals had breached the prison, would have -- the
21 news headlines would have said something like guards injured or
22 killed. It would have said inmates injured or killed. It
23 would have said, you know, potentially a riot situation. And
24 Mr. Allison stopped, really, all of that with his efforts in
25 that particular case with regards to the jail situation.

1 He has, as a result of that, had to be moved for his
2 safety. His family has -- he has received threats with regards
3 to that. And then, with respect to the other cooperation that
4 he did in this case with respect to a murder, he has received
5 threats with regards to that.

6 And I think this Court has been around long enough to
7 know, Mr. Kent's been around long enough to know, is that these
8 things follow him throughout the time that he is going to be
9 away from his family. I think that's a factor that the Court
10 should consider, first, in determining whether or not to grant
11 the motion and certainly with determining whether or not to
12 grant the -- to what extent the departure is in this case.

13 As I said, I appreciate that this case has presented
14 certain challenges for all of the parties involved. I hope
15 Mr. Kent will agree with me that in the recent past, when
16 Mr. Banks and I started working with Mr. Allison, there had
17 been no issues. There's been some legal things, some of the
18 things attorneys do argue over, certain things and
19 applications. But there's been no issues with respect to
20 Mr. Allison.

21 He has cooperated. He's made other efforts to cooperate
22 in this case. And again, I think that is significant in making
23 a determination as to whether to grant the motion and, again,
24 as to the extent of the motion that the Court -- if the Court
25 grants the particular motion. I just note that there is the

1 potential for further cooperation. Obviously, that will be
2 rewarded should that result -- should that bear fruit, but I
3 would ask the Court to grant the motion.

4 I think a departure of more than four levels is
5 appropriate in this case. I've not, again, seen cooperation
6 that actually kept people from being proactively injured or
7 killed. And I think, if people are trying to smuggle guns into
8 a jail facility, there's only one reason you do that. You
9 know, you can't have a gun to protect your cell like, you know,
10 perhaps people could on the outside. Those guns would have
11 been used -- those weapons would have been used in an offensive
12 manner that's significant.

13 I understand the challenges. I think a departure greater
14 than four levels in this particular case is appropriate.

15 THE COURT: Okay. Well, as I mentioned earlier, the
16 recounting of the information that forms the basis of the
17 Government's motion is more extensive in this case than
18 literally any other such motion I have entertained in all my
19 years I've been doing this.

20 And I will find that, based on the facts that are set out
21 in the motion, that the Court will find, in accordance with
22 what is set forth there and is uncontested, that those facts
23 lead the Court to a finding that the defendant has provided
24 substantial assistance in the investigation of prosecution of
25 other individuals, and that such assistance warrants the

1 granting of a downward departure.

2 The question here is the extent of that downward
3 departure. And I will start with the fact that the Government
4 has indicated that the downward departure should be four
5 levels. And I will note that a four-level downward departure
6 is unusual. A downward departure more than four levels is very
7 unusual, at least for this Court.

8 When I read the Government's motion and all of the facts
9 that give rise to the motion, I was very surprised that the
10 Government was moving for a four-level downward departure
11 because it did not strike me that the totality of the
12 circumstances set forth in the motion warranted four levels.
13 At the same time, defense counsel argues focusing on one
14 particular part that we've been referring to before as the
15 rehabilitative act warrants a departure more than the four
16 levels.

17 So the question is, having determined that a downward
18 departure is warranted, is it a downward departure that, based
19 on the nature and extent of the defendant's actions, warrants a
20 four-level downward departure, a two-level downward departure,
21 or more than a four-level downward departure?

22 And I fall back to what is really my default in these
23 matters, and that is assessing the value of the cooperation or,
24 in this case, hardly the lack of cooperation. The Court is at
25 a loss for making an adequate assessment because, really, the

1 Government is the party that has the understanding of how much
2 assistance has helped or hindered or how the help and the
3 hindrance work together to come to some sort of conclusion.

4 Based thereon, I will find, in accordance with the
5 Government's motion, that the nature and extent of all of the
6 activity of the defendant as set forth in the Government's
7 motion for downward departure warrants a departure the
8 equivalent of four offense levels. And, therefore, the Court
9 will sentence in this matter with reference to a sentencing
10 range calling for a term of imprisonment between 292 months and
11 365 months.

12 Mr. Thomas, did I correctly calculate the effect of a
13 four-level downward departure?

14 MR. THOMAS: Yes, your Honor.

15 THE COURT: Do you agree, Mr. Kent?

16 MR. KENT: Yes, your Honor.

17 THE COURT: Well, Mr. Thomas, let me turn to you.
18 This is obviously a complex case. We've been at this for two
19 hours. A lot of facts, a lot of issues. How do we throw all
20 of these facts and issues into the cauldron under 3553(a) to
21 arrive upon what the appropriate sentence is?

22 MR. THOMAS: Thank you, Judge. I'm going to try not
23 to repeat arguments that I've made, although some of that is
24 perhaps inevitable. I appreciate the Court's indulgence today,
25 and what I'm going to talk about is I'm going to focus on a few

1 things.

2 I'm going to focus on what other individuals in this case
3 received, and obviously I'll talk about that first. I don't
4 have the benefit of how their presentence reports looked when
5 they arrived here in court and were sentenced, but, as I noted
6 in my sentencing memorandum, individuals received sentences
7 from between 37 months to 108 months.

8 I understand that -- so, first, the 3553 speaks to
9 disparities among defendants, and that's defendants, I think,
10 in this courtroom, in this case, and, really, defendants
11 throughout the federal system.

12 Even taking into account that perhaps Mr. Allison's
13 criminal history is a bit more lengthy -- even if that is the
14 case, and I can't really speak to that because I don't know
15 what those were, the --

16 THE COURT: Well, I can assure you that his criminal
17 history category, as well as his total offense level, are
18 substantially higher than any codefendant.

19 MR. THOMAS: Then I'll accept that. And my argument
20 would be, even accepting that, that the disparity that exists
21 between an individual who got 108 months and an individual who
22 potentially faces a low end of 292 months is a significant
23 disparity that this Court should address in fashioning a
24 reasonable sentence.

25 We have asked for a sentence which obviously would warrant

1 a substantial variance from where we are. We believe that's it
2 warranted. Again, if the Court were inclined to agree with us
3 today, the defense today, it would still be a sentence that was
4 higher than anybody else in this case had received.

5 And accepting all of the facts that Mr. Kent has proffered
6 and the Court's ruling against -- rulings in this particular
7 case, and accepting the Court's factual understanding and
8 interpretations and legal rulings, that what should happen is
9 he should get a sentence that's higher than the others. And
10 that's what -- even if we agree that -- accept all those things
11 and if the Court were to grant our motion as written, he would
12 get a sentence of higher than the other people who were
13 involved in this.

14 I think what we have asked for is warranted, again, based
15 on his -- again, his efforts to date. And I won't -- you know,
16 I won't beat that dead horse anymore about where we've come
17 from the last few months, but that's a fact. That's what
18 happened.

19 3553 talks about the things that this Court has to
20 consider, the deterrence, the respect for the law enforcement,
21 the rehabilitative efforts. Those are all things that
22 this Court has to consider. And I suggest to you -- and I
23 understand -- I think I have alluded to this in my motion, that
24 that cooperation in 5K considerations are just that. That's
25 how a cooperation is rewarded.

1 But I think it is -- there is also a place for
2 consideration with respect to how the Court looks at those
3 factors, how -- the rehabilitation, the respect for law
4 enforcement. I think what Mr. Allison has done in the past few
5 months and tried to do in the past few months speak to that, so
6 I think a sentence substantially below the low end in this case
7 of 292 months is appropriate.

8 The other thing that I want to address and talk about is
9 really who Mr. Allison is. As I've pointed out early on in the
10 process, he has family here who he supports. You know, he's
11 got a range of children from little children up to adult
12 children. He has worked with and supported and -- you know,
13 they're -- they're a family. He's never, as I understand, not
14 supported his children. He does those things.

15 But I want to really talk a little bit more -- I want to
16 begin earlier and talk about who Mr. Allison is. And I
17 understand -- I have read the presentence report several times,
18 and I understand all of the facts and everything that has been
19 said today. But I don't think it can be overlooked, the path,
20 if you will, that Mr. Allison has taken to get here.

21 At a very early age, diagnosed as learning disabled. I'm
22 not an educator, but it appears that that was not perhaps
23 properly addressed. I don't know. I just know what he's --
24 how he's been diagnosed. And the Court, I think, has
25 reviewed -- I won't go into detail about the intellectual and

1 the cognitive abilities, and there's been really no dispute
2 with regards to that.

3 All of that is a part of Mr. Allison. Raised in the
4 projects, where limited -- limited options, and then coupled
5 with the educational backdrop that I just described. He is
6 bullied in school in terms of -- I think Mr. Allison used the
7 term bullied because he rode the short bus at school. Held
8 back in the first grade four times. In the ninth grade, he's
9 17 years old.

10 At some point in that process, between first grade and
11 ninth grade, on one of his tours in first grade, approached by
12 an individual of 13 to help assist in trafficking his drugs,
13 where Mr. Allison was rewarded with tennis shoes and fast food.
14 All of that, I think, is -- are things the Court should
15 consider in terms of who Mr. Allison is.

16 He didn't -- and my point with regards to that, Judge, is
17 he didn't get here by himself. I will tell you that I have
18 worked with, again, you know, in my sitting in various seats, a
19 number of defendants. And I don't know -- I think there's a
20 difference between defendants who have opportunities,
21 defendants who aren't, arguably, educationally disabled, if you
22 will, and wind up where they are. There's a difference between
23 that individual and Mr. Allison.

24 I understand and won't stand here and say that there's not
25 going to be, when we adjourn here shortly, a substantial

1 sentence that is warranted in this case because of what -- all
2 of what has occurred. But I believe that all of the disparity,
3 Mr. Allison's background, that he is -- does seem to be -- and
4 I appreciate Mr. Kent's argument. I've made similar arguments,
5 that he's not fully convinced that Mr. Allison gets it. I
6 appreciate and understand that argument.

7 I will say that, within the last six or eight months,
8 we've seen different things start to happen, and the Court
9 should factor that into fashioning, in this particular case,
10 what is a reasonable sentence. I would suggest that that is
11 not, in this case, a guideline sentence where other defendants
12 received 108 months, even if there is differences in how
13 adjustments will apply.

14 Based on all of that, your Honor, I am going to remain
15 steadfast and ask the Court to impose a sentence of no more
16 than 120 months, which is the mandatory minimum in this
17 particular case with respect to Mr. Allison.

18 THE COURT: Well, you say 120 months, but you haven't
19 really told me where you come up with that 120 months. I mean,
20 it is considerably less than half of the low end of the
21 sentencing range after accounting for the defendant's
22 cooperation.

23 I mean, that's a downward variance like -- I don't know
24 that I've ever seen one like that. I would fully expect, if I
25 impose that sentence, the Government's going to appeal that as

1 an utterly unreasonable sentence under the circumstances of
2 this case. So you've got to give me more to go on.

3 And if all you're saying is, well, compare it to the
4 108 months of the highest sentence of one of his
5 codefendants -- but his codefendants were the people he was
6 supervising, the people who were working under him within this
7 organization. Yeah, they may have done some things on their
8 own on the side, but they were working under him. And to say
9 that, yeah, 12 more months added to the longest of those
10 sentences ought to be enough, I would guarantee that that's not
11 going to compute for any of the members of the Fourth Circuit
12 Court of Appeals.

13 MR. THOMAS: So I appreciate the Court's comments,
14 your Honor. This is how -- this would be my response to that.

15 First -- my argument is really twofold, that I think that
16 a sentence of less than what is called for now under the
17 guidelines is appropriate in this case. That's first.

18 Secondly, I think we can disagree, obviously, on the
19 amount of that departure. I think that 3553 -- and I'm
20 probably going to butcher the language, but there is what is
21 referred to as the parsimony provision, that this Court has to
22 impose or should impose a sentence that is not one day more
23 than what is necessary to accomplish the -- what 3553
24 prescribes.

25 I think that a sentence of 120 months does that. Again, I

1 can appreciate that, if you will, reasonable minds may differ
2 on that particular number. But I think that, when weighing all
3 the 3553 factors, Mr. Allison's background, what he has done in
4 this case, the movement, if you will, from, obviously, the
5 challenges that presented itself from day one, I think that
6 sentence is appropriate.

7 The Court said that -- I hope I characterize it
8 correctly -- it's never heard of or -- of a departure that
9 significant. I will say that one of the comments we talked
10 about earlier was this case is, I think, largely different than
11 anybody -- certainly myself and, I think, Mr. Kent -- has ever
12 really dealt with. And I don't mean that, you know, it's not a
13 drug-trafficking case. We do those all day long every day.
14 But the moving parts and everything that has happened, this
15 case is different. Mr. Allison is different.

16 Mr. Allison's journey from childhood to how he has found
17 himself in this predicament is different. Mr. Allison's
18 journey from, once he found himself in this predicament to
19 where we are today, is different than, I think, most
20 defendants. And I think that's what I'm asking the Court to
21 consider to imposing a reasonable sentence in this particular
22 case.

23 THE COURT: Well, when you say it's different, what --
24 not to sound flippant, but what's so different about this one?
25 I mean, in many respects, the difficulties that Mr. Allison has

1 had in life are very similar to ones that I see on a regular
2 basis.

3 MR. THOMAS: And I appreciate that, your Honor. And,
4 again, I've been in a few courtrooms, and I understand that
5 argument.

6 What I don't see -- and I will tell you what I've never
7 seen, never seen, is an individual who was learning-disabled,
8 who was impacted by his environment like it appears that
9 Mr. Allison was to do these things. I've never seen that, and
10 so I'm asking the Court to factor that in.

11 I mean, the presentence report talks about the educational
12 testing when he was younger. I think it was an IQ of -- and I
13 apologize if I'm incorrect -- I think it was about 71.

14 THE COURT: I think it was 81.

15 MR. THOMAS: Eighty-one? But it was -- I mean, the
16 Court understands, I think, that aspect of this argument. More
17 recently, prior counsel has provided information that suggested
18 that's 56. I will tell you that I've never seen that. I think
19 that's different. And so I think all of those factors call for
20 a sentence that is --

21 THE COURT: Well, how does a -- how does a low
22 intelligence level, which is essentially what you're arguing,
23 call for a lower sentence? What's the connection there?

24 MR. THOMAS: I --

25 THE COURT: Why does that warrant -- I mean, you're

1 talking about a sentence that's -- I didn't do the math, but
2 it's somewhere around a 60 percent downward variance because of
3 intellectual difficulties. How does that fit into the 3553(a)
4 factors?

5 MR. THOMAS: Your Honor, I believe that, in
6 considering who this particular defendant is, if he was -- I
7 mean, quite frankly, I don't know -- and I'm certainly not here
8 today to argue that, you know, the plea is infirm or anything
9 like that. We've addressed all of that. But there's a
10 difference between a person who is intellectually challenged,
11 who kind of does what he has to do, does what people encourage
12 him to do, falls into that lifestyle at a very early age, and
13 follows that path.

14 Unfortunately -- and let me just concede this point. You
15 know, this is not Mr. Allison's first rodeo. He's had some
16 opportunities -- I don't know if "opportunities" is the right
17 word, but he has had some interactions with the system, and
18 perhaps that system failed him. And I'm not going to sit here,
19 you know, and talk about the criminal justice system failed
20 him. But he didn't do any time on those, is really kind of
21 what I'm getting at, no meaningful time to -- like what is
22 going to happen today, whether the Court agrees or disagrees
23 with me.

24 Those are the things that I'm asking the Court to consider
25 with respect to 3553. As he sits here, he is different from a

1 person who does not have intellectual challenges, has
2 opportunities, and then makes conscious decisions to forego
3 that and to travel down a certain path.

4 Again, I can appreciate the Court's argument or suggestion
5 that perhaps 120 months is a bridge too far, but I think, on
6 the other side of that, 292 months is similarly a bridge too
7 far. So I'd ask the Court to impose a sentence below the
8 guidelines in this particular case.

9 THE COURT: Well, one thing you haven't addressed was
10 the point that we left open at the conclusion of the discussion
11 regarding the acceptance of responsibility, because what I said
12 was -- I granted the three-level reduction for acceptance of
13 responsibility with the recognition of the fact that it's less
14 than a pure acceptance of responsibility, that here there was a
15 pretty significant failure of acceptance that was followed by a
16 very unorthodox, rehabilitative act, and that, since this is
17 one of those provisions that the guidelines require that either
18 the light is on or the light is off -- I said, well, okay, the
19 light is on, I'll allow for the three-level reduction. But I
20 do that in recognition of the fact that it is quite imperfect.

21 That would indicate to me a sentence probably higher than
22 the low end of the guideline range. You've already said you
23 think the low end of the guideline range is a bridge too far --
24 too high, not too low -- but you didn't even address this.

25 MR. THOMAS: I mean, I'm happy to now, your Honor.

1 Again, I certainly appreciate the Court's view of the
2 facts in this case in view of granting acceptance, that perhaps
3 it would be better if there was a gray area on acceptance and
4 the Court had some discretion to do some different things. You
5 know, I'll accept that and appreciate that argument.

6 Notwithstanding that, even if the Court could have
7 said, well, you know, I'm going to give you two points, I'll
8 accept -- or, actually, I'm going to give you one point on
9 acceptance and, you know, let the Government do what the
10 Government does with its one point, we -- if that were the
11 scheme, the sentencing scheme, we'd be in a different place. I
12 would still be arguing to you that -- where we were with
13 regards to that.

14 But, again, that type of sentence is too substantial in
15 this particular case. And that -- and so anything within that
16 range is not necessary given the -- given 3553. I appreciate
17 the Court's argument. I appreciate --

18 THE COURT: Well, I'm not arguing, I'm asking.

19 MR. THOMAS: I appreciate the Court's question. I'm
20 sorry if I was -- articulated that incorrectly.

21 And so I think what I'll say kind of in concluding with
22 respect to that particular question is, again, if 120 months
23 isn't the number, that there needs to be a number somewhere
24 else -- I don't want to argue against myself. I don't want to
25 say, well, Judge, if you're not going to do 120 months, do 130.

1 I don't want to do that. I mean, my argument is my argument.

2 But appreciating the Court's questions and appreciating
3 what I think is the Court's concern, my position is that a
4 sentence of 292 months is more than what is necessary in this
5 particular case to accomplish what 3553 directs this Court to
6 accomplish.

7 THE COURT: You've obviously been doing this for a
8 long time based on what you've said. And as mentioned before,
9 the guideline range in this case regarding the offense conduct,
10 all of the factors, aside from what we keep referring to as the
11 rehabilitative act, would be a sentence of 360 months to life
12 in prison.

13 From your whole career, what's a drug case that warrants
14 360 to life? You say this case is one that 292 is a bridge too
15 far. What's a case that warrants 360 to life?

16 MR. THOMAS: Judge, I've prosecuted cases where
17 defendants received in excess of that. I come from -- I'll try
18 not to delve off too far into my background.

19 I have prosecuted a case in which a defendant received
20 440 months. He didn't plead guilty. He went to trial. He was
21 an individual who was a cartel member, so not responsible for
22 the distribution of -- and I hope the Court can appreciate
23 this -- small amounts of drugs. And I appreciate that, you
24 know, this is not -- you know, these are not eight-balls in
25 this particular case.

1 THE COURT: Oh, yeah. I mean, this one is -- it works
2 out to over 16,000 kilos of converted drug weight. I mean,
3 we're talking about huge amounts in this case.

4 MR. THOMAS: Correct. Correct, because of how the
5 guidelines -- because of how the guidelines treat, you know,
6 crack and how they treat meth. I appreciate that, and that's
7 kind of why I wanted to be very clear what I'm arguing at this
8 point because the Court asked me who deserves these substantial
9 sentences.

10 This was an individual who, again, didn't go -- didn't
11 plead guilty, went to trial. And I believe he got 420 months
12 at the end of the day, 60 months more than what Mr. Allison's
13 guidelines calculate out to be before the 5K. This is an
14 individual who presided over an organization that was, if you
15 will, five, six times more significant than what is before the
16 this Court.

17 He was responsible for the distribution -- the importation
18 into the United States of thousands of kilograms of cocaine.
19 In that case we seized millions of dollars. He was responsible
20 for the transportation of thousands of kilos of cocaine. That
21 sentence for him was absolutely warranted.

22 And so I'm going to make this point, and then I'll, you
23 know, entertain any other questions that the Court has. Had he
24 pled guilty, he'd be looking at the same amount of time that
25 Mr. Allison is -- was before his departure.

1 THE COURT: But that's a function of the way that the
2 guideline range is -- or the guidelines are structured. And
3 there's a point at which you cap out. You can have -- I've
4 actually seen it recently, a case with a total offense level
5 that worked out to 55, but then that's reduced to 43 because
6 the chart only goes to 43.

7 MR. THOMAS: And I think that's why we're talking
8 about a 3553 -- I -- 100 percent, I agree with absolutely the
9 observation the Court just made. The Court -- but the Court's
10 question to me was, who deserves that type of sentence?

11 And Mr. Allison and that defendant are two different
12 individuals. And for you to preside over a drug distribution
13 network in the country of Mexico and to be extradited, for you
14 to preside over a drug distribution in the country of Mexico
15 that impacts Georgia, North Carolina, Alabama -- and these are
16 all places that this distribution network impacted. That
17 individual deserved -- there's an argument that he deserved
18 that type of sentence. Now, again --

19 THE COURT: There's an argument that he deserved the
20 life-imprisonment sentence, but go ahead. Keep going.

21 MR. THOMAS: Well, perhaps in my other life, maybe I
22 would have made -- perhaps I did make similar arguments to
23 that. But the Court -- simply put, the Court asked me who
24 deserves that type of sentence, and that's not Mr. Allison.

25 You know Mr. Allison -- again, appreciating all the

1 findings the Court has made, he -- you know, these are -- we're
2 talking about five, six, seven people at most, if I understand
3 the facts correctly, not somebody who presided over multiple
4 stash houses in multiple states. Okay? He does not deserve
5 the same type of sentence that a cartel leader deserves, and
6 that, I think, is the heart, if you will, of 3553.

7 If we were 10 years ago or 12 years ago, we really
8 wouldn't be having this discussion, and I -- you know, I'd
9 stand up and do what I needed to do, and you'd say, yeah, I
10 appreciate that, Mr. Thomas, this guideline range is this, and,
11 you know, we can go home now. And that would be -- but the law
12 is clearly recognized that there are things that this Court can
13 consider in fashioning an appropriate sentence.

14 THE COURT: Okay. Thank you.

15 MR. THOMAS: Thank you.

16 THE COURT: Mr. Kent, what's the position of the
17 Government?

18 MR. KENT: Your Honor, it's the Government's
19 position that the defendant should be sentenced within the
20 range of 292 to 365 months without any downward departure or
21 downward variance.

22 I believe a sentence within the range would be appropriate
23 and sufficient. It would reflect the fact that the defendant
24 committed a very serious offense over an extended period of
25 time. In this case, it's clear -- the evidence is clear that

1 he was the driving force behind a significant conspiracy that
2 moved a variety of dangerous drugs to the communities in this
3 district.

4 It's one thing -- what we oftentimes see with drug
5 defendants in these cases is -- one thing is they go from being
6 the user to being the dealer, and they wind up adding to the
7 problem, helping to drive the misery. It's something entirely
8 different -- whether it's this district or Atlanta or south
9 Texas -- to be the person that is the driving force behind the
10 conspiracy because you are the one that's actually driving the
11 misery within the community. And here, this is a community
12 that's very close to this courthouse. Bartlett Arms is just
13 about less than, I think, nine-tenths of a mile from this
14 courthouse.

15 I understand there's oftentimes a natural inclination
16 between prosecutors, agents, defense attorneys to compare.
17 What is this case like compared to Atlanta? What this case
18 like compared to New York City? And I've done those cases.
19 I've traveled all around the country doing those cases.

20 My concern is what is the impact within this community?
21 And within this community, when we look at the drug quantities
22 the defendant is now held responsible for -- and I think
23 everyone understands the conspiracy case. Those are really
24 just a snapshot of what was actually going on. But if you use
25 standard user quantities, that's more than 2,000 individual

1 user quantities of heroin, and it's more than 35,000 individual
2 user quantities of methamphetamine. So it is significant
3 within this district.

4 Now, I think what's important to recognize -- one of the
5 things that's important to recognize is the fact that this
6 defendant set himself apart from a typical dealer in this
7 district. I've said most often, especially in meth cases, that
8 the dealer was a user first. But there's no evidence in the
9 PSR that this defendant first was addicted to crack or heroin
10 or methamphetamine. So what that says to me, in my years of
11 experience, is that this was about money. This was about
12 bettering himself.

13 In most drug cases, you're just talking about a single
14 firearm. Here, we have multiple, numerous firearms in two
15 different locations, all of which were loaded. In most cases,
16 we're lucky to find a stash house. Here, we have two
17 surveillance system, camera-protected stash houses.

18 Most times, as I said earlier, the leadership or role
19 enhancements don't necessarily fit the evidence in the case.
20 But here, it fits it to a tee. And probably the saddest
21 example of that was Mr. Downs, who argued or stated on his
22 behalf at his sentencing that it was the defendant that was the
23 one that pushed him, directed him into the most serious part of
24 this conspiracy, which in the end, having listened to those
25 jail calls leading up to the last April 2020 setting of this

1 case for sentencing, you know, Mr. Downs had been taken away
2 from his daughter in large part, in that 108-month sentence,
3 because of the defendant pushing him to the more serious part
4 of the conspiracy.

5 His disrespect for his community and the law was really
6 never, I think, better illustrated than his disrespect for this
7 Court when -- and we have an obstruction enhancement to take
8 care of that, to address that. But I think that was
9 indicative, the fact that he would file these affidavits, under
10 penalty of perjury, and make false claims about them, which was
11 actually shortly before this 38-count indictment dropped on
12 him, showed that he really had this attitude of he could do
13 whatever he wants, wherever he wants. And that was an attitude
14 that we saw in the Bartlett Arms, especially talking to the
15 people in the community there and -- which is why they feared
16 him so much.

17 A guideline sentence in this case would promote respect
18 for the law and would provide adequate deterrence. It's
19 certainly clear that the defendant -- and I think counsel would
20 agree -- has had a number of issues with deterrence in the
21 past. He's in the second-highest criminal history category
22 possible. He has a history of disrespect for the law and those
23 that enforce it.

24 His prior convictions for giving false information to law
25 enforcement, obstruction, fleeing or attempting to elude,

1 escape, and assault on a law-enforcement officer inflicting
2 serious injury -- and coming into this case, he also had
3 multiple prior felony convictions. This is now his fourth
4 narcotics-trafficking felony conviction.

5 I can't say I've had a defendant with that record, just
6 narcotics-trafficking convictions alone, where there's any sort
7 of credible argument that, in some way, he deserves the bare
8 minimum or the statutory minimum called for by Congress. If
9 anything, he has become the poster child for doing what you
10 want without regard to the safety of others, without regard to
11 what the law will do to you, and with regard to the fact that
12 you've been convicted multiple times and have gone to prison,
13 maybe not long periods of time, you're still just going to do
14 whatever the heck it is you want to do.

15 He does have a low IQ. I think the report that
16 Mr. Devereux, former counsel, had submitted shows that is
17 consistent with what was in the PSR. But there's a couple
18 issues with that. It doesn't tell the whole story. What
19 really does? Sitting down with someone for two days, not with
20 them in their environment in which they had been functioning,
21 dealing drugs, is very different than sitting down with them in
22 an office space or in a jail.

23 I've had defendants with low IQs in conspiracy cases.
24 Those folks are usually relegated to being lookouts. Those
25 folks are usually relegated to being -- in one sad case, being

1 given color-coded bags to tell you what kind of drug it was so
2 you could walk up the two blocks from the stash house to the
3 dealers. But that's not the defendant.

4 So you can have a low IQ -- I've met plenty of folks that
5 do -- but are highly functioning. And they have an ability --
6 they have skills that most people who are educated or have high
7 IQs don't. You can have a low IQ and be a very successful drug
8 dealer, and he was in this case. He was making so much money,
9 he obviously had to have a money counter in his residence,
10 where there was \$100,000 in cash. That's incredibly
11 significant.

12 I asked ADA Sprinkel, who I mentioned in my 5K motion,
13 about this idea of an IQ, understanding that you can have one,
14 but that doesn't necessarily means that it affects every aspect
15 of your life because, when he sat down with the folks from
16 Atlanta, obviously any defendant wants to put their best foot
17 forward.

18 So I explained to him, after he interviewed him, what was
19 in the report and what the allegations were with regard to his
20 IQ and how it affects him, and he was surprised. He didn't
21 view him as someone as -- as someone who was a potential
22 witness, he didn't view him as someone who had an incredibly or
23 extremely low IQ. He found the defendant engaging and someone
24 who could recall specific facts from long periods of time ago
25 and relay them in an articulate manner to them. So while he

1 does have a lower IQ, it certainly does not ever appear to have
2 impacted his ability to successfully engage in this conspiracy.

3 The sentence of 120 months requested by the defense, if
4 you were to grant that variance, as your Honor pointed out,
5 that's, I calculated, about 59 percent below the low end of the
6 range. It's 172 months off the bottom of the range. The
7 reasons that have been offered in writing or here in court are
8 not all that significant in the sense that the background,
9 unfortunately, after doing this for multiple decades, is a
10 pretty common background in drug cases.

11 His cooperation is obviously, from the Government's
12 perspective, already accounted for in the 5K motion. I'll say
13 a couple of things on that.

14 I think, if I were to go in front of a conference of
15 prosecutors and lay out the facts and the substances and say
16 this is what I did, half of those people would disagree and say
17 don't file the 5K. I did what I believe was correct, given
18 that final act of cooperation that he did, but it's not without
19 some skepticism.

20 And the skepticism is prior to the threats that have been
21 described recently. I was never made aware, prior to recently,
22 that there had been threats. I was told by Mr. Devereux that
23 an Atlanta-based attorney had met with the defendant, advised
24 him against cooperating -- not these folks here -- and that put
25 some pressure on him, but I was never told anything about

1 people were threatening him or his family. And given the
2 issues, particularly going into the last sentencing date, I was
3 concerned about the veracity of those claims.

4 What I don't have a question about is some of the threats
5 that were laid out in the 5K motions for the cooperating
6 codefendants, who experienced pressure being put on them or
7 don't cooperate with the Government, which they're alleging was
8 coming from the defendant and/or his family. We had one person
9 specifically who was in a position to cooperate, but refused to
10 because he was afraid of the defendant. So I think any threats
11 that they're alleging now, while I have some skepticism, have
12 to be balanced against the threats made against the other
13 cooperators.

14 The last thing I'll talk about is this idea of sentence
15 disparity. Your Honor oftentimes says comparing a sentence is
16 like comparing apples and oranges, so I did take the time to
17 look at each of the defendants. And I'll just summarize, not
18 individually, but as a group, the differences between them and
19 this defendant.

20 Only one codefendant had a starting base offense level
21 equal to the defendant, and that was Mr. Odum. I'll talk about
22 him momentarily. Three were two offense levels lower, one was
23 four offense levels lower, and two were 10 offense levels
24 lower. Four of the codefendants with lower base offense levels
25 were involved in a single incident during the course of the

1 conspiracy, whereas this defendant's involved and played out
2 over the course of two years.

3 Coming to Mr. Odum, who had a similar starting offense
4 level, he only had one applicable enhancement, compared to the
5 defendant. He cooperated earlier than the defendant. He
6 cooperated against the defendant. His cooperation was more
7 substantial, and he received more levels off. There was no
8 question from the Court as to whether or not he deserved those
9 levels. And in addition, the Court varied because of some
10 medical conditions that he had.

11 Going to criminal history categories, only one defendant
12 had an equal to or greater criminal history category than the
13 defendant, and that was Mr. Wright, who I'll talk about in a
14 moment. Three of the codefendants were two criminal history
15 categories lower, and three of them were in the lowest criminal
16 history category possible.

17 And looking at Mr. Wright, unlike the defendant, he only
18 had one applicable enhancement. He cooperated early. Again,
19 he cooperated against the defendant. He also cooperated, as I
20 said earlier, against another dealer that I was prosecuting at
21 the time. He was then sentenced to 360 months to life after
22 losing acceptance of responsibility, in part based on the
23 information provided by Mr. Wright. So his cooperation was
24 certainly more substantial, and he received more levels off.
25 The Court didn't vary in his case any additional time.

1 And Miss Shuping is sort of the outlier. She is the
2 lowest sentence in the case, but she is responsible for far
3 less drugs than anyone. She was the first person that we
4 encountered and then flipped, if you will. Single incident,
5 single criminal history point, lowest criminal history
6 category, no enhancements, eligible for safety valve, most
7 significant cooperation, doing the most significant buys in the
8 case. And even then, the Court didn't vary further after her
9 cooperation.

10 I think the only significant disparity that exists in the
11 case is based on the defendant's own actions. He was the
12 leader in drug quantities, he was the leader in applicable
13 enhancements, he has among the worst criminal history category
14 in the case, and he was the driving force behind the
15 conspiracy.

16 What they're asking for -- departing 59 percent or
17 172 months -- runs contrary to the guidelines, to the
18 3553(a) factors, and the weight of the evidence against the
19 defendant. The truth is, although he has a low IQ, he is a
20 hustler. He is savvy. He may be a compassionate, caring, and
21 extraordinary man to his friends and family, which I read in
22 the letters. But to the people of Bartlett Arms and to the
23 folks that traffic drugs with him, he was clearly someone to be
24 feared.

25 The Government believes this defendant deserves every day

1 of a guideline sentence. And I think the Court should take
2 into account, when deciding where within the range to sentence
3 the defendant, that his acceptance of responsibility was less
4 than full. It should take into account the fact that, despite
5 the Government seeing some good, it was clear, for a
6 significant amount of time, that the defendant was gaming the
7 system, that his acceptance was less than pure, and that his
8 failures, prior to the Swain County detention facility
9 cooperation or prior to now withdrawing objections, was a very
10 significant failure.

11 For those reasons, I'd ask you to sentence the defendant
12 within the range, your Honor. Thank you.

13 THE COURT: Thank you.

14 Mr. Allison, at this time you have the opportunity to
15 address the Court and to tell me anything that you feel I
16 should know before I make my decision regarding your sentence.

17 THE DEFENDANT: Your Honor, Judge Reidinger, I want to
18 say that, you know, I'm sorry for any of my wrong that I've
19 done. But I want to say that, since I've been incarcerated,
20 I've had the COVID. It made my diabetes worse. I have to take
21 two shots a day and that my life is in your hands right now,
22 your Honor. My life is in your hands. My son, my wife, my
23 family life is in your hands today.

24 And that -- what I did at Swain County, I just felt that I
25 didn't -- I did it to save some lives because some officers was

1 about to get killed down there that day. I just called my
2 lawyer, let them know what was going on, your Honor, not
3 because of the -- I thought it was just the right thing to do.

4 Trying to change my life, your Honor. And growing up as a
5 kid, that's all I was around, your Honor, was -- I grew up in a
6 drug-infested neighborhood. My mom had 16 kids, and I had to
7 do the best that I had to do to get -- to eat a meal, your
8 Honor.

9 Like this guy, he had me selling drugs for him at a
10 younger age. And if I didn't sell the drugs or if I messed up,
11 he had a cage, your Honor, that he would put me in and make me
12 take -- make me suffer in this cage. And I just trying to make
13 money to make sure me and my sisters and my little brothers,
14 we ate.

15 And it just -- you hold my life, your Honor. I want to
16 get back to see my kids, my son -- my son that --

17 THE COURT: Take your time, Mr. Allison.

18 THE DEFENDANT: I hate my son has to sit here and see
19 me going through this. I got a son out there with a bullet in
20 his head. He's suffering from a brain injury. And I got a
21 daughter, she got lupus. I was her caregiver, and I'm all they
22 have.

23 It's just I been through a lot in my life. When I was
24 young, your Honor, been through a lot. I watched my mama die.
25 I sit at a young age and watched my mama die. I watched my

1 daddy die. I got 14 children that I was raising, your Honor,
2 but I take care of my children.

3 And just to make me lose my wife, my family -- you hold
4 the key to my life in your hands, your Honor. I'm sorry for
5 all my wrongs that I done. That's all that I knew. That's all
6 I knew just growing up. Didn't have nobody to tell me this and
7 that. Growing up, I was picked on a lot.

8 And you just hold my life, your Honor. And I don't want
9 no people to get hurt while I was at that jail. I didn't want
10 nobody to get hurt. I thought it was the right thing to do,
11 your Honor, because they was already talking about what they
12 was going to do when the polices came in, once they got the
13 guns and the drugs in there.

14 I called my lawyer late that night, and I told him I don't
15 want to have no part to this. I don't want to be a part in
16 this. You know, this ain't right for them guys -- I didn't
17 want to end up seeing myself get hurt in that. I don't want to
18 die -- I don't want to die in jail, your Honor. I don't want
19 to die. I'm already in my 40s, my late 40s.

20 I don't want to die, your Honor. My life has changed,
21 your Honor, and I'd ask you for one more chance, your Honor,
22 with my life. I just want one more chance with my life. And,
23 your Honor, you -- I beg of you and I ask for you, your Honor,
24 just for one more chance. I don't want to die in here. I got
25 my younger son, my kids. They need me.

1 And I beg of you, I beg you, please, your Honor, please.
2 Just one more chance, your Honor, please. Please, one more
3 chance, and I promise you you will never see me again.

4 THE COURT: Anything else, Mr. Allison?

5 MR. THOMAS: Thank you, your Honor.

6 THE DEFENDANT: Excuse me, your Honor. Can I give my
7 son a hug? Can I give him a hug, your Honor? I ain't touched
8 my son in three years.

9 THE COURT: Well, I understand that, but you're in the
10 custody of the marshals, and I'm sure that the marshals' rules
11 involve that you can't have any physical contact with any other
12 person who's on the other side of the bar.

13 THE DEFENDANT: Your Honor, I don't want to die -- I
14 don't want to die in here, your Honor, please.

15 THE COURT: Well, ordinarily I'd pronounce sentence
16 first and give my reasons after. But in light of the
17 complexity of this particular case, I want to do some -- put
18 some of my reasoning on the record before I pronounce the
19 sentence.

20 I -- in many respects, I find this case to be difficult
21 because of the novelty of the issues that it presents. All of
22 the facts and circumstances that are presented in the
23 Government's downward departure motion to me, at least, make
24 this case much more complex. Were it not for those facts and
25 circumstances -- both beneficial to the defendant, as well as

1 negative for the defendant -- this would be, in many respects,
2 an ordinary case.

3 When I say "ordinary," it's not ordinary in the sense that
4 it involves ordinary quantities of these controlled
5 substances because, in that respect, this is an unusual case
6 because of the very large quantities, as I mentioned. This
7 case involves in excess of 16,000 kilograms of converted drug
8 weight. That is -- that's a phenomenal quantity for which the
9 defendant is responsible and for which the defendant does not
10 dispute.

11 And if I were only looking at the offense conduct and the
12 seriousness of the offense and how large a quantity of deadly
13 drugs we were talking about in this case, there is little doubt
14 in my mind that this case is one just like others that I've
15 had here that would fall into that range of a sentence of
16 360 months to life in prison.

17 That is a good measure of the seriousness of the offense,
18 and I think that that's borne out by even comparing the
19 defendant's guideline range before the 5K to his codefendants
20 because these are the codefendants who were involved in these
21 various pieces of the conspiracy that the defendant was the hub
22 of the wheel.

23 And there are a couple of them who received a sentence of
24 108 months, including one who, as part of his factual basis
25 that he admitted to, said that he was brought into the

1 conspiracy at the behest of the defendant in this case, and
2 yet he received 108 months. His drug quantities were much,
3 much lower, were a fraction of what this defendant is
4 responsible for.

5 It also concerns me with regard to the deterrent effect
6 because Mr. Allison here has received very long sentences,
7 previously a 15-year sentence and a 10-year sentence. Now,
8 there were reasons why he did not serve all of that 15 years
9 and 10 years, but he's received long sentences before, and yet
10 they did not deter the sort of extreme conduct that we have in
11 this case. And as such, the nature and circumstances of the
12 offense and the history and characteristics of the defendant
13 call for a very long sentence.

14 Then, layered on top of that, there are the negative
15 things that are set forth in the Government's downward
16 departure motion, which the Government obviously feels -- and I
17 believe rightly feels -- are outweighed to some degree by the
18 particular cooperation that the defendant gave regarding the
19 incident at the Swain County detention facility.

20 So it's -- the process of applying the 3553(a) factors, to
21 me, becomes this process of looking at this case separate and
22 apart from the events at Swain County and then figuring what
23 reduction is warranted by that level of action, that positive
24 action on the part of the defendant.

25 I also need to take into account to some degree what the

1 defendant has overcome because, even though in many respects
2 the defendant's background is not remarkable, it is a
3 background that unfortunately I see all too often, of one who
4 comes from a very difficult background, a background that was
5 essentially devoid of guidance, having intellectual
6 difficulties, all of those factors, but yet emerging from that.

7 And that's worth something, as well, but it is worth
8 something based on the degree to which the -- not just this
9 defendant, but any defendant who's in that situation has acted
10 to overcome those sorts of obstacles in life.

11 And here, while defense counsel has focused a great deal
12 on the obstacles, defense counsel hasn't focused a whole lot on
13 the overcoming of those obstacles. So it's worth something,
14 but, again, it is a mitigating factor that is of some limited
15 application in this case.

16 Having said that, I will pronounce sentence. Mr. Allison,
17 I need for you to stand for the application -- for the
18 pronouncement of the sentence.

19 Pursuant to the Sentencing Reform Act of 1984 in the case
20 of the United States versus Booker, its the judgment of this
21 Court, having considered the factors noted in 18 U.S.C.
22 Section 3553(a), that the defendant, Rodney Dejuan Allison, is
23 hereby committed to the custody of the United States Bureau of
24 Prisons to be imprisoned for a term of 310 months.

25 The Court recommends that the defendant be allowed to

1 participate in any educational and vocational opportunities
2 during the period of incarceration.

3 THE DEFENDANT: (Inaudible.)

4 THE COURT: The Court calls to the attention of the
5 custodial authorities that the defendant has a history of
6 substance abuse and recommends that the defendant be allowed to
7 participate in any available substance-abuse-treatment programs
8 while incarcerated and, if eligible, to receive the benefit of
9 18 U.S.C. Section 3621(e)(2).

10 The Court calls to the attention of the custodial
11 authorities that the defendant has a history of mental-health
12 issues and recommends that the defendant be allowed to
13 participate in any available mental-health-treatment programs
14 while incarcerated.

15 THE DEFENDANT: My life. That's my whole life.
16 That's my life.

17 THE COURT: It is ordered that the defendant be
18 required to support all dependents from prison earnings during
19 the period of incarceration, as outlined in the presentence
20 report.

21 Upon release from imprisonment, the defendant shall be
22 placed on supervised release for a term of eight years.

23 THE DEFENDANT: It ain't right.

24 THE COURT: Within 72 hours of release from the
25 custody of the Bureau of Prisons, the defendant shall report

1 in-person to the probation office in the district to which the
2 defendant is released.

3 While on supervised release, the defendant shall not
4 commit another federal, state, or local crime and shall comply
5 with the standard conditions of supervised release as those
6 have been adopted by the Court in the Western District of North
7 Carolina.

8 In addition, the defendant shall comply with the following
9 additional condition. The defendant shall participate in a
10 mental-health evaluation and treatment program and follow the
11 regulations of that program.

12 The probation officer, in consultation with the treatment
13 provider, will supervise the defendant's participation in the
14 program, including, but not limited to, the provider, location,
15 modality, duration, and intensity thereof. The defendant shall
16 take all mental-health medications as prescribed by a licensed
17 healthcare practitioner.

18 It is ordered that the defendant shall pay the United
19 States a special assessment in the amount of \$100. The Court
20 finds that the defendant does not have the ability to pay a
21 fine or interest, and, having considered the factors noted in
22 18 U.S.C. Section 3572(a), the Court will waive the payment of
23 a fine and interest in this case.

24 The defendant shall forfeit his interest in those
25 properties as identified in the consent order and judgment of

1 forfeiture that is being entered contemporaneously with this
2 judgment.

3 Payment of the criminal monetary penalties shall be due
4 and payable immediately. The Court has considered the
5 financial and other information contained in the presentence
6 investigation report and finds that the following is feasible.

7 If the defendant is unable to pay my monetary penalty
8 immediately, during the period of imprisonment, payments shall
9 be made through the Federal Bureau of Prisons Inmate Financial
10 Responsibility Program. Upon release from imprisonment, any
11 remaining balance shall be paid in monthly installments of no
12 less than \$50 to commence within 60 days of release until paid
13 in full.

14 Throughout the period of supervision, the probation
15 officer shall monitor the defendant's economic circumstances
16 and shall report to the Court with recommendations as warranted
17 any material changes that affect the defendant's ability to pay
18 any court-ordered penalties.

19 Again, with regard to my reasons for imposing the sentence
20 that I have, I've explained most of those reasons before I
21 pronounced sentence. But particularly, looking at the
22 seriousness of the offense -- and here it's the seriousness of
23 the offense based on the prodigious quantity of very dangerous
24 controlled substance. And, of course, the guidelines here,
25 with regard to controlled-substance offenses, are driven

1 largely by the quantities that are involved. And here, this
2 may not be the highest quantity that I've dealt with in a case,
3 but it's among the highest. It's certainly a substantial
4 amount. And it's not only that it was the quantities here, but
5 it was the different drugs, the dangerousness of those drugs,
6 the presence of the firearms, and then the fact that the
7 defendant had not been deterred by his prior prosecutions and
8 sentences.

9 Like I said in the earlier part of my explanation, were it
10 not for the element having to do with the incident down at the
11 Swain County detention facility, the sentence would have been
12 in line with other sentences that I have imposed in drug cases
13 of this -- of this extent, would have been a sentence somewhere
14 between 360 months and a life term in prison.

15 But I have obviously taken a substantial amount off of
16 what that sentence would have been in light of the defendant's
17 actions in bringing that issue to the attention of the
18 authorities through his attorney and also to the extent that
19 the defendant had the change of heart, change of mind,
20 regarding acceptance of responsibility. And that has been
21 taken into account, as well, even though that acceptance of
22 responsibility was less than perfect.

23 So for all of those reasons -- and I will reiterate one
24 thing that was alluded to by the assistant United States
25 attorney, and that is I have found in this case -- as I find in

1 many cases that Mr. Kent handles, since he handles most of the
2 drug cases -- his approach in this case has been what I would
3 find to be considerably lenient compared to what I believe
4 other prosecutors would have done. And I believe that that has
5 led me to a sentence that is consistent with that leniency that
6 he has advocated.

7 So for all of those reasons, I have imposed the sentence
8 that I have.

9 Mr. Thomas, are there any other issues regarding either
10 the sentence or the judgment that we need to address?

11 MR. THOMAS: I'd ask just a couple of housekeeping
12 matters for the defense, your Honor. First --

13 THE COURT: I need for you to talk into the
14 microphone. You've stood to the side, and I'm having trouble
15 hearing you.

16 MR. THOMAS: Just a couple housekeeping matters for
17 the defense, your Honor. First, I don't know what this Court's
18 practice is. In Atlanta, typically I'd ask for a
19 recommendation to a facility -- a facility that is close to --

20 THE DEFENDANT: (Inaudible.)

21 MR. THOMAS: -- to a facility where he can be close to
22 his family members.

23 THE COURT: Well, do you have a particular location?
24 Do you want me to designate him as close as possible to Atlanta
25 or Asheville?

1 MR. THOMAS: Atlanta, your Honor.

2 THE COURT: In the judgment, the recommendation that
3 the defendant be placed as close as possible to Atlanta,
4 considering his security classification.

5 MR. THOMAS: Thank you, your Honor. And then I think,
6 if this is the appropriate place for just objections to the
7 sentence, we would object to the Court not granting our
8 objections for the firearm enhancement or adjustment for the
9 premises objection and the role of the offense. Lastly, we
10 would object to the extent or the lack thereof of the departure
11 pursuant to 3553 with respect to reasonable sentence. And then
12 finally, in a similar vein, to the extent of departure with
13 regards to the 5K.

14 THE COURT: Well, I believe all of your objections are
15 preserved. And to the extent they're not, you've certainly
16 placed them on the record now. And I believe -- I hope -- I
17 have addressed each of those issues adequately on the record so
18 that any Appellate Court understands how I ruled and why I
19 ruled the way that I did. In fact, on some of those that
20 you're objecting to, I actually have ruled in your favor, just
21 not to the extent that you feel that those particular factors
22 apply.

23 But with regard to any of the variance factors, I found
24 that they warranted some degree of downward adjustment to what
25 the sentence otherwise would have been. And I hope that that

1 was clear on the record.

2 MR. THOMAS: It was indeed, your Honor. I just -- by
3 way of sort of explanation -- and again, the Court appreciates,
4 I think, that we practice in the Northern District mostly, and
5 that's just -- traditionally, we are required to preserve those
6 objections after the sentence is pronounced.

7 THE COURT: And I certainly want you to preserve every
8 objection that you feel you might want to take up on appeal.

9 MR. THOMAS: Thank you, your Honor.

10 THE COURT: I know some judges are insulted by having
11 their cases taken up on appeal. I'm not one of those. If I've
12 made an error and Mr. Allison is entitled to some sort of
13 relief that I have not taken into account, we'll come back, and
14 we'll do this all again.

15 MR. THOMAS: Thank you, your Honor. We appreciate
16 that.

17 THE COURT: Anything else, Mr. Thomas?

18 MR. THOMAS: I don't believe so, your Honor. I
19 believe that takes care of things for the defense.

20 THE DEFENDANT: Can I say something, your Honor?

21 THE COURT: Well, I suggest that you talk to your
22 attorney before you say anything because it would be on the
23 record.

24 THE DEFENDANT: (Inaudible.)

25 MR. THOMAS: Thank you, your Honor. I believe that's

1 going to take care of us for today.

2 THE COURT: Okay. Mr. Kent, anything else for the
3 Government?

4 MR. KENT: Just in keeping with the plea agreement,
5 the Government moves to dismiss Counts 2 through 4, 7 through
6 9, 12 through 17, 20, 23, and 28 as to Mr. Allison in the
7 superseding Bill of Indictment, your Honor.

8 THE COURT: And those counts in the superseding
9 Bill of Indictment as to Mr. Allison -- Counts 2 through 4,
10 7 through 9, 12 through 17, 20, 23, and 28 -- are hereby
11 dismissed.

12 Anything else, Mr. Kent?

13 MR. KENT: No, your Honor.

14 THE COURT: Mr. Allison, you have the right to appeal
15 this sentence to the Fourth Circuit Court of Appeals. You have
16 pleaded guilty pursuant to a plea agreement, and that plea
17 agreement includes some waivers that may substantially affect
18 your appeal rights. You will need to consult with your
19 attorney as to what affect those waivers may have on your --
20 any of your appeal rights.

21 However, if you choose to appeal, you must file a written
22 notice of appeal with the clerk of this court within a period
23 of 14 calendar days following the date of the entry of the
24 final judgment in this case.

25 If you wish to appeal, but do not have the funds with

1 which to appeal, you may file an affidavit of indigency, and,
2 if approved by the Court, you may appeal at Government expense.

3 Do you understand this right of appeal as I have
4 explained it?

5 THE DEFENDANT: (No response?)

6 THE COURT: Mr. Allison, do you understand that right
7 of appeal?

8 THE DEFENDANT: (The defendant shook his head from
9 side to side.)

10 THE COURT: You do not? Do I need to explain it
11 again?

12 MR. BANKS: If we can just have a moment, Judge.

13 THE COURT: You may.

14 (Discussion off the record.)

15 MR. BANKS: Thank you, Judge.

16 THE COURT: Okay. Mr. Allison, do you want me to
17 explain these appeal rights a second time or do you understand
18 them?

19 THE DEFENDANT: (No response.)

20 THE COURT: Well, it -- out of an abundance of
21 caution, even though I believe I have explained them clearly, I
22 will go through each of these points again and go through them
23 slowly with the hope that they are fully understood.

24 First of all, Mr. Allison, you have a right to appeal.
25 What you might appeal is the sentence.

1 Now, your appeal rights may be very limited. You have
2 pleaded guilty pursuant to a plea agreement. That plea
3 agreement includes some provisions in there whereby you agreed
4 to waive a number of your appeal rights, but --

5 THE DEFENDANT: Nah.

6 THE COURT: -- but you didn't waive all of them.
7 Therefore, if you're wanting to appeal, you're going to need to
8 talk to your attorneys to find out what appeals rights you have
9 given up and what appeal rights you still have.

10 But if you choose that you want to appeal, you have to
11 file a written notice of appeal. You have to file that written
12 notice of appeal with the clerk of this court -- not the Court
13 of Appeals, this court. You have to do it within 14 days --
14 and that's calendar days -- of the date on which the judgment
15 in this case, the paper judgment, is entered.

16 If you wish to appeal, but do not have the funds with
17 which to appeal, you have to file an affidavit of indigency.
18 If that affidavit is approved by the Court, you may be able to
19 appeal at Government expense.

20 Do you understand that right -- your appeal rights as I
21 have explained?

22 THE DEFENDANT: I'm trying to figure out why did I
23 agree to all them drug quantities, all that stuff. I don't get
24 it. I ain't getting it.

25 THE COURT: Well --

1 THE DEFENDANT: I just ain't getting it. I don't
2 understand it, man. I don't know Jeffery (phonetic). I never
3 knew that man. I don't know him.

4 THE COURT: Mr. Thomas, do you feel that there is any
5 benefit to further trying to explain the appeal rights to
6 Mr. Allison?

7 MR. THOMAS: This has been an afternoon for difficult
8 questions for me, Judge. Your Honor, I believe you've advised
9 him on the record, and I don't that we'd get much further with
10 the -- further discussion with regards to that. I can tell you
11 Mr. Banks and I will discuss with Mr. Allison the next steps in
12 this matter.

13 THE COURT: Well, and to that end, obviously, I have
14 explained the appeal rights twice, once with the specific
15 script that the law requires and, secondly, with some
16 explanation. And, of course, there is a court reporter here,
17 so that has been taken down verbatim. And to the extent that
18 it may be needed, a transcript can be ordered of those appeal
19 rights as I spoke them from the bench and that they may be
20 repeated to Mr. Allison and, with the assistance of counsel,
21 may be explained to him in greater detail, and any questions
22 that he may have can be answered at that time.

23 But I believe that I have adequately explained what the
24 appeal rights are. And, of course, he is represented by very
25 competent counsel. And, therefore, any appeal that may be

1 forthcoming can be filed in the appropriate manner within the
2 appropriate time.

3 Is there anything else that we need to address before we
4 recess?

5 MR. BANKS: Judge -- and I'm sorry. I know Mr. Thomas
6 is lead, but, in speaking with Mr. Allison, I would just
7 respectfully request that the Court grant him the credit for
8 time that he's served while in custody. I know that that is a
9 fact that the Federal Bureau of Prisons addresses, but I
10 believe he's been in custody now for over three years, since
11 his initial arrest. I would ask that, from the date that he
12 was arrested by federal authorities, that this Court give him
13 that credit.

14 THE COURT: Well, credit is calculated by the Bureau
15 of Prisons. My understanding, though from looking at the cover
16 page of the presentence report is that, even though he was
17 originally taken into custody on state charges, he was not
18 writtied over to federal court, but, rather, he was released on
19 bond by the state and then arrested by the marshal service on
20 the federal charges.

21 Therefore, assuming that that is correct, it is my
22 estimation that the Bureau of Prisons would give Mr. Allison
23 credit from the date of that federal arrest, which according to
24 the face of the presentence report occurred on April 10th,
25 2019, and that would be the day on which the service of

1 sentence would begin to run.

2 Now, there were a lot of provisoes in there because I'm
3 only going on the face of the presentence report. And if the
4 Bureau of Prisons calculates it differently, there isn't
5 anything I can do about it because that's an executive
6 decision. But I hope, Mr. Banks, that at least answers the
7 questions that you were presenting.

8 MR. BANKS: It does, Judge. Thank you, your Honor.

9 THE COURT: Okay. Anything else that we need to
10 address?

11 MR. THOMAS: No, your Honor. I just want to add I
12 appreciate the Court's indulgence with respect to our little
13 misstep with regards to that initial filing. We'll get that
14 taken care of, as well.

15 THE COURT: Well, and like I said with regard to that
16 filing, I don't want you to feel as though I'm chastising you.
17 It is just we have that local rule in place because it
18 facilitates the adequate preparation. I got to this courthouse
19 at six o'clock this morning, and one of the reasons I did was I
20 had been told by my assistant that that had been filed, and I
21 knew I needed to read it before this hearing, and I knew I was
22 going to be in court all morning. So --

23 MR. THOMAS: I understand, your Honor.

24 THE COURT: So be that as it may, the only thing is
25 you made me get here early, and I don't hold that against you

1 as to that. But I do bring it to your attention in case you're
2 ever back here because you might be -- you're a very good
3 lawyer, you defend your client well. And to that end, I
4 wouldn't mind seeing you back here one bit.

5 MR. THOMAS: Thank you, Judge. I have been chastised
6 by the Court before, and this does not feel like that
7 experience. So again, I appreciate the indulgence, and thank
8 you, your Honor.

9 THE COURT: Very good. I appreciate everybody's
10 preparation. As I said, this has been a very difficult case
11 that has a lot of twists and turns to it, has a lot of
12 difficulties to it. But I very much appreciate the way both
13 sides have been very well-prepared for all of those issues and
14 the way that you have presented yourselves here today.

15 MR. THOMAS: Thank you, your Honor.

16 THE COURT: So with that, marshal, please recess us
17 until further calling.

18 (End of proceedings.)
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C E R T I F I C A T E

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I, DEBORAH COHEN-ROJAS, Federal Official Court
Reporter for the United States District Court for the Western
District of North Carolina, a Certified Shorthand Reporter,
Registered Diplomate Reporter, and Certified Realtime Reporter,
do hereby certify that I reported by machine shorthand the
foregoing proceedings contained herein on the aforementioned
subject on the date herein set forth, and that the foregoing
pages constitute a full, true and correct transcript.

Dated this 3rd day of April, 2022.

DEBORAH COHEN-ROJAS
CSR, RDR, CRR
Federal Official Court Reporter